United Nations A/C.6/55/L.8

General Assembly

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Fifty-fifth session
Sixth Committee
Agenda item 156
Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives

Argentina, Austria, Bulgaria, Canada, Chile, Cyprus, Czech Republic, Denmark, Germany, Hungary, Iceland, Ireland, Italy, Lesotho, Malta, Netherlands, Norway, Poland, Romania, Russian Federation, Sweden, the former Yugoslav Republic of Macedonia, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, Zambia and Zimbabwe: draft resolution

Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives

The General Assembly,

Having considered the reports of the Secretary-General,[1]

Conscious of the need to develop and strengthen friendly relations and cooperation among States,

Convinced that respect for the principles and rules of international law governing diplomatic and consular relations is a basic prerequisite for the normal conduct or relations among States and for the fulfilment of the purposes and principles of the Charter of the United Nations,

Alarmed by the recent acts of violence against diplomatic and consular representatives, as well as against representatives of international intergovernmental organizations and officials of such organizations, which have endangered or taken innocent lives and seriously impeded the normal work of such representatives and officials,

Expressing sympathy for the victims of such illegal acts,

Welcoming the Security Council resolutions and statements by the President of the Security Council in relation to flagrant violations of the protection, security and

[1] A/INF/54/5 and Add.1 and Add.2 and A/55/164 and Add.1-3.

00-73138 (E) 061100

safety of diplomatic and consular missions and representatives, as well as missions and representatives of international intergovernmental organizations and officials of such organizations,

Concerned at the failure to respect the inviolability of diplomatic and consular missions and representatives,

Recalling that, without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State,

Recalling also that diplomatic and consular premises must not be used in any manner incompatible with the diplomatic or consular functions,

Emphasizing the duty of States to take all appropriate measures as required by international law, including measures of a preventive nature, and to bring offenders to justice,

Welcoming measures already taken by States to this end in conformity with their international obligations,

Convinced that the role of the United Nations, which includes the reporting procedures established under General Assembly resolution 35/168 of 15 December 1980 and further elaborated in subsequent Assembly resolutions, is important in promoting efforts to enhance the protection, security and safety of diplomatic and consular missions and representatives,

1. *Takes note* of the reports of the Secretary-General;[1]

2. *Strongly condemns* acts of violence against diplomatic and consular missions and representatives, as well as against missions and representatives of international intergovernmental organizations and officials of such organizations, and emphasizes that such acts can never be justified;

3. *Also strongly condemns* the recent acts of violence against such missions, representatives and officials, referred to in relevant reports under this item;

4. *Urges* States to strictly observe, implement and enforce the principles and rules of international law governing diplomatic and consular relations and, in particular, to ensure, in conformity with their international obligations, the protection, security and safety of the missions, representatives and officials mentioned in paragraph 2 above officially present in territories under their jurisdiction, including practical measures to prohibit in their territories illegal activities of persons, groups and organizations that encourage, instigate, organize or engage in the perpetration of acts against the security and safety of such missions, representatives and officials;

5. *Also urges* States to take all necessary measures at the national and international levels to prevent any acts of violence against the missions, representatives and officials mentioned in paragraph 2 above and to ensure, with the participation of the United Nations where appropriate, that such acts are fully investigated with a view to bringing offenders to justice;

6. *Recommends* that States should cooperate closely through, inter alia, contacts between the diplomatic and consular missions and the receiving State with regard to practical measures designed to enhance the protection, security and safety

of diplomatic and consular missions and representatives and with regard to the exchange of information on the circumstances of all serious violations thereof;

7. *Urges* States to take all appropriate measures, in accordance with international law, at the national and international levels, to prevent any abuse of diplomatic or consular privileges and immunities, in particular serious abuses, including those involving acts of violence;

8. *Recommends* that States should cooperate closely with the State in whose territory abuses of diplomatic and consular privileges and immunities may have occurred, including by exchanging information and providing assistance to its juridical authorities in order to bring offenders to justice;

9. *Calls upon* States that have not yet done so to consider becoming parties to the instruments relevant to the protection, security and safety of diplomatic and consular missions and representatives;

10. *Also calls upon* States, in cases where a dispute arises in connection with a violation of their international obligations concerning the protection of the missions or the security of the representatives and officials mentioned in paragraph 2 above, to make use of the means for peaceful settlement of disputes, including the good offices of the Secretary-General, and requests the Secretary-General, when he deems it appropriate, to offer his good offices to the States directly concerned;

11. *Requests* all States to report to the Secretary-General in accordance with paragraph 9 of resolution 42/154 of 7 December 1987;

12. *Requests* the Secretary-General to issue a report on the item, in accordance with paragraph 12 of resolution 42/154, containing also an analytical summary of the reports received under paragraph 11 above, on an annual basis, as well as to proceed with his other tasks pursuant to the same resolution;

13. *Decides* to include in the provisional agenda of its fifty-seventh session the item entitled "Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives".

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General Assembly

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Fifty-fifth session
Sixth Committee
Agenda item 156
Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives

Argentina, Austria, Bulgaria, Canada, Chile, Cyprus, Czech Republic, Denmark, Germany, Hungary, Iceland, Ireland, Italy, Lesotho, Malta, Netherlands, Norway, Poland, Romania, Russian Federation, Sweden, the former Yugoslav Republic of Macedonia, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, Zambia and Zimbabwe: draft resolution

Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives

Corrigendum

1. **The list of sponsors** *should read*

   Argentina, Austria, Bolivia, Bulgaria, Canada, Chile, Cyprus, Czech Republic, Denmark, Finland, Germany, Hungary, Iceland, Ireland, Italy, Lesotho, Malta, Netherlands, Norway, Poland, Romania, Russian Federation, Slovenia, Spain, Sweden, the former Yugoslav Republic of Macedonia, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, Uruguay, Zambia and Zimbabwe: draft resolution

2. **At the beginning of the sixth preambular paragraph**

   For Welcoming *read* Recalling

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Fifty-fifth session
Sixth Committee
Agenda item 161
Report of the Committee on Relations with the Host Country

Bulgaria, Canada, Costa Rica, Côte d'Ivoire and Cyprus: draft resolution

Report of the Committee on Relations with the Host Country

The General Assembly,

Having considered the report of the Committee on Relations with the Host Country,[1]

Recalling Article 105 of the Charter of the United Nations, the Convention on the Privileges and Immunities of the United Nations,[2] the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations[3] and the responsibilities of the host country,

Recalling also that, in accordance with paragraph 7 of General Assembly resolution 2819 (XXVI) of 15 December 1971, the Committee should consider, and advise the host country on, issues arising in connection with the implementation of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations,

Recognizing that effective measures should continue to be taken by the competent authorities of the host country, in particular to prevent any acts violating the security of missions and the safety of their personnel,

1. *Endorses* the recommendations and conclusions of the Committee on Relations with the Host Country contained in paragraph 62 of its report;[1]

2. *Notes* that the Committee has taken note of the opinion of the Legal Counsel of 1 September 2000 concerning the issuance of visas to participants in United Nations-related meetings, and that, in this connection, the Committee has recommended that the host country take that opinion into consideration in the future;

[1] *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 26* (A/55/26).
[2] General Assembly resolution 22 A (I).
[3] See General Assembly resolution 169 (II).

00-73262 (E) 081100

3. *Considers* that the maintenance of appropriate conditions for the normal work of the delegations and the missions accredited to the United Nations is in the interest of the United Nations and all Member States, and requests the host country to continue to take all measures necessary to prevent any interference with the functioning of missions;

4. *Expresses its appreciation* for the efforts made by the host country, and hopes that the issues raised at the meetings of the Committee will continue to be resolved in a spirit of cooperation and in accordance with international law;

5. *Notes* that during the reporting period the travel controls previously imposed by the host country on staff of certain missions and staff members of the Secretariat of certain nationalities remained in effect, and requests the host country to consider removing such travel controls, and in this regard notes the positions of affected States, of the Secretary-General and of the host country;

6. *Also notes* that the Committee anticipates that the host country will continue to ensure the issuance, in a timely manner, of entry visas to representatives of Member States, pursuant to article IV, section 11, of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations,[3] inter alia, for the purpose of their attending official United Nations meetings;

7. *Requests* the host country to continue to take steps to resolve the problem relating to the parking of diplomatic vehicles in a fair, balanced and non-discriminatory way, with a view to responding to the growing needs of the diplomatic community, and to continue to consult with the Committee on this important issue;

8. *Requests* the Secretary-General to remain actively engaged in all aspects of the relations of the United Nations with the host country;

9. *Requests* the Committee to continue its work in conformity with General Assembly resolution 2819 (XXVI) of 15 December 1971;

10. *Decides* to include in the provisional agenda of its fifty-sixth session the item entitled "Report of the Committee on Relations with the Host Country".

United Nations A/C.6/55/L.10

General Assembly

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7 November 2000

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Fifty-fifth session
Sixth Committee
Agenda item 154
Progressive development of the principles and norms of international law relating to the new international economic order

Draft decision

Progressive development of the principles and norms of international law relating to the new international economic order

At its ... plenary meeting, on ..., the General Assembly, on the recommendation of the Sixth Committee, decided to resume consideration of the legal aspects of international economic relations at its ... session and to include in the provisional agenda of that session the item entitled "Progressive development of the principles and norms of international law relating to the new international economic order".

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United Nations A/C.6/55/L.11

General Assembly

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13 November 2000

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Fifty-fifth session
Sixth Committee
Agenda item 162
Establishment of the International Criminal Court

Draft resolution

Establishment of the International Criminal Court

The General Assembly,

Recalling its resolutions 47/33 of 25 November 1992, 48/31 of 9 December 1993, 49/53 of 9 December 1994, 50/46 of 11 December 1995, 51/207 of 17 December 1996, 52/160 of 15 December 1997, 53/105 of 8 December 1998 and 54/105 of 9 December 1999,

Noting that the Rome Statute of the International Criminal Court was adopted on 17 July 1998[1] and is open for signature in New York at United Nations Headquarters until 31 December 2000, and taking note of the Final Act of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court done at Rome on 17 July 1998,[2]

Recalling the Millennium Declaration,[3] adopted at the Millennium Assembly, in which heads of State and Government stressed the importance of the International Criminal Court,

Noting in particular that the Conference decided to establish a Preparatory Commission for the Court,[4] and that the Commission held three sessions in 1999, from 16 to 26 February, 26 July to 13 August and 29 November to 17 December, and three sessions in 2000, from 13 to 31 March, 12 to 30 June and 27 November to 8 December,

Bearing in mind the mandate of the Preparatory Commission, as set out in resolution F adopted by the Conference, with regard to the preparation of proposals for practical arrangements for the establishment and coming into operation of the Court,

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[1] A/CONF.183/9.
[2] A/CONF.183/10.
[3] Resolution 55/2.
[4] A/CONF.183/10, annex I, F.

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Recalling, with regard to future work of the Preparatory Commission and related working groups, the decision agreed upon by the Commission, referred to in paragraph 14 of the summary of the proceedings of its fifth session,[5] to establish three new working groups, in addition to the working group on the crime of aggression,

Recognizing the continuing need for making available adequate resources and secretariat services to the Preparatory Commission in order to enable it to discharge its functions efficiently and expeditiously,

Emphasizing the need to make the necessary arrangements for the commencement of the functions of the International Criminal Court in order to ensure its effective operation,

Noting that a growing number of States have deposited their instruments of ratification and that a significant number of States have signed the Statute,

1. *Reiterates* the historic significance of the adoption of the Rome Statute of the International Criminal Court;[1]

2. *Calls upon* all States to consider signing, ratifying or acceding to the Statute of the International Criminal Court, as appropriate, and encourages efforts aimed at promoting awareness of the results of the Conference and of the provisions of the Statute;

3. *Welcomes* the important work accomplished by the Preparatory Commission in the completion of the part of the mandate relating to the draft texts of the rules of procedure and evidence and the elements of crimes, as required by resolution F, and notes in this respect the importance of the growing participation in the work of the working group on the crime of aggression;

4. *Requests* the Secretary-General to reconvene the Preparatory Commission, in accordance with resolution F, from 26 February to 9 March 2001 and from 24 September to 5 October 2001, to continue to carry out the mandate of that resolution and, in that connection, to discuss ways to enhance the effectiveness and acceptance of the Court;

5. *Also requests* the Secretary-General to make available to the Preparatory Commission secretariat services, including the preparation of working documents if so requested by the Preparatory Commission, to enable it to perform its functions;

6. *Further requests* the Secretary-General to invite, as observers to the Preparatory Commission, representatives of organizations and other entities that have received a standing invitation from the General Assembly, pursuant to its relevant resolutions,[6] to participate in the capacity of observers in its sessions and work, and also to invite as observers to the Preparatory Commission representatives of interested regional intergovernmental organizations and other interested international bodies, including the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda;

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[5] PCNICC/2000/L.3/Rev.1.

[6] Resolutions 253 (III), 477 (V), 2011 (XX), 3208 (XXIX), 3237 (XXIX), 3369 (XXX), 31/3, 33/18, 35/2, 35/3, 36/4, 42/10, 43/6, 44/6, 45/6, 46/8, 47/4, 48/2, 48/3, 48/4, 48/5, 48/237, 48/265, 49/1, 49/2, 50/2, 51/1, 51/6, 51/204, 52/6, 53/5, 53/6, 53/216, 54/5, 54/10 and 54/195.

7. *Notes* that non-governmental organizations may participate in the work of the Preparatory Commission by attending its plenary and its other open meetings, in accordance with the rules of procedure of the Commission, receiving copies of the official documents and making available their materials to delegates;

8. *Encourages* States to make voluntary contributions to the trust funds established pursuant to General Assembly resolutions 51/207 and 52/160, the mandates of which were expanded pursuant to Assembly resolution 53/105, towards meeting the costs of the participation in the work of the Preparatory Commission of the least developed countries and of those developing countries not covered by the trust fund established in resolution 51/207;

9. *Requests* the Secretary-General to report to the General Assembly at its fifty-sixth session on the implementation of the present resolution;

10. *Decides* to include in the provisional agenda of its fifty-sixth session the item entitled "Establishment of the International Criminal Court".

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Fifty-fifth session
Sixth Committee
Agenda item 157
Convention on jurisdictional immunities of States and their property

Convention on jurisdictional immunities of States and their property

Report of the Chairman of the Working Group

Chairman: Mr. Gerhard **Hafner** (Austria)

I. Introduction

1. By paragraph 3 of its resolution 54/101 of 9 December 1999, the General Assembly decided that the open-ended working group of the Sixth Committee, established under resolution 53/98, would continue, at the fifty-fifth session of the General Assembly, its work on consideration of the future form of, and outstanding substantive issues related to, the draft articles on jurisdictional immunities of States and their property adopted by the International Law Commission at its forty-third session;[1]

2. At the fifty-fifth session of the General Assembly, the Sixth Committee, at its second meeting, on 25 September 2000, elected Mr. Gerhard Hafner (Austria) Chairman of the Working Group.

3. The Working Group held six meetings from 6 to 10 November 2000.

4. The Working Group had before it the draft articles on the topic, submitted by the Commission to the General Assembly in 1991; comments submitted by Governments, at the invitation of the General Assembly, on different occasions since 1991 (A/55/298, A/54/266, A/53/274 and Add.1, A/52/294, A/48/313, A/48/464, A/C.6/48/3 and A/47/326 and Add.1-5); document A/C.6/49/L.2, containing the conclusions of the chairman of the informal consultations held in 1994 in the Sixth Committee pursuant to Assembly decision 48/413; chapter VII of the report of the

[1] *Yearbook of the International Law Commission, 1991*, vol. II, Part Two (United Nations publication, Sales No. E.93.V.9 (Part 2)), document A/46/10, chap. II, para. 28.

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International Law Commission on the work of its fifty-first session[2] and the report of its Working Group on Jurisdictional Immunities of States and their property annexed thereto; the report of the Chairman of the Working Group of the Sixth Committee at the fifty-fourth session of the General Assembly (A/C.6/54/L.12); and three working papers submitted by the Chairman of the Working Group at the present session (A/C.6/55/WGJIS/WP.1; WP.2 and Add.1 and WP.3).

5. The Working Group held a general exchange of views. It was followed by a discussion of the five outstanding substantive issues identified at the previous session of the Working Group, namely: (a) concept of a State for purposes of immunity; (b) criteria for determining the commercial character of a contract or transaction; (c) concept of a State enterprise or other entity in relation to commercial transactions; (d) contracts of employment; and (e) measures of constraint against State property. Initially, the discussion had as a basis a working paper submitted by the Chairman of the Working Group at the present session (A/C.6/55/WGJIS/WP.1) and there were subsequently two revised versions of the paper (A/C.6/55/WGJIS/WP.2 and Add.1 and A/C.6/55/WGJIS/WP.3). The Working Group also had a discussion on possible future course of action in connection with the draft articles. As a result of the discussion held in the Working Group, the Chairman prepared a number of texts on the five outstanding issues, which could be seen as constituting a possible basis for further discussions on the topic.

II. General exchange of views

6. A number of delegations praised the work carried out by the International Law Commission on the topic as a solid draft with provisions constituting a very good, firm basis for further work. They stressed that the number of issues that still created some problems to delegations, although important, were really very few in number and that every effort should be made to solve them. They noted in this connection the progress already achieved in finding a solution at the preceding session of the Working Group. Some of the pending issues were very close to an agreed solution. In the view of these delegations a binding instrument in the form of a convention would constitute the most appropriate form to be given to the draft articles and a diplomatic conference would be the most appropriate forum for the adoption of such instrument. They recalled that the General Assembly had already called for such an instrument and a forum on the topic in several resolutions. A convention would have the advantage of stopping the proliferation of national laws on the topic, codifying existing practice of States in this area and promoting a uniform law on State immunity.

7. Some other delegations stressed that although the remaining substantive issues were few in number, they were nevertheless of a key nature for the draft articles as a whole. In their view, various efforts undertaken in different forums during the last decade tended to show that the difficulties in trying to solve them could well be of an insurmountable character. Such an exercise risked becoming repetitive without leading to concrete results. In their view, these difficulties reflected the current state of international law on the matter. State practice was far from being uniform on key issues, and in many States court decisions on State immunity were still evolving or developing. Consequently, these delegations viewed the possibility of convening a

[2] *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 10* (A/54/10).

diplomatic conference for the purpose of adopting an international convention on the topic as an unrealistic approach. In their view, pragmatism and flexibility, both as to the substance and the format, were essential. The elaboration of a model law on the topic was mentioned by these delegations as a possible realistic outcome, one which would give guidance to States without necessarily freezing the solution to practical issues and State practice in this area. Other possible outcomes also mentioned by these delegations were the elaboration of general guidelines or principles on the topic in the form of a declaration by the General Assembly attached to a consensus resolution.

8. Some other delegations stressed that recent efforts in this area, and in particular the report of the Chairman of the Working Group at the preceding session of the Sixth Committee (A/C.6/54/L.12), showed that the Working Group had come very close to a generally agreed solution on some of the outstanding substantive issues. They mentioned, in particular, the issues concerning the concept of a State for purposes of immunity, the concept of a State enterprise or other entity in relation to commercial transactions and the contracts of employment.

9. Some delegations were in principle in favour of a convention on the topic as the most appropriate instrument to set out clear rules on jurisdictional immunity, limit the proliferation of national laws on the matter and avoid the insufficient legal weight and lack of true codification on the matter which the adoption of instruments of a different nature would entail. They were, however, ready to be flexible for the sake of achieving consensus or general agreement and could go along with the elaboration of other instruments, such as a model law on the topic, as an interim measure which would not preclude, later, the adoption of a convention.

10. As regards the methodology of the Working Group, some delegations indicated that, if general agreement still proved difficult to achieve on some of the outstanding substantive issues, the Working Group should at least try to further circumscribe the pending difficulties by producing two or three clear alternative texts for each issue.

III. The five outstanding substantive issues

11. The discussion on the five outstanding substantive issues revolved, initially, around an informal paper submitted by the Chairman (A/C.6/55/WGJIS/WP.1) containing a proposed text or various alternative proposed texts for each of the issues. In the light of the results on the discussion of that paper, the Chairman subsequently submitted two revised versions of his paper (A/C.6/55/WGJIS/WP.2 and Add.1 and WP.3), which were also discussed in the Working Group. The paragraphs below summarize the discussion held on the basis of those papers.

A. Concept of a State for purposes of immunity

12. The initial text submitted by the Chairman on this issue read as follows:

"Item 1
Definition of the State

Article 2, paragraph 1 (b)

'State' means:

(i) The State and its various organs of government;

(ii) Constituent units of a federal State and political subdivisions of the State, which are entitled to perform acts in the exercise of the governmental authority;

(iii) Agencies or instrumentalities of the State or other entities, to the extent that they are entitled to perform acts in the exercise of governmental authority of the State;

(iv) Representatives of the State acting in that capacity."

13. A number of comments or suggestions were made on the above formulation.

14. As regards subparagraph (ii), it was suggested that, on the first line, the conjunction "and" should be replaced by the conjunction "or".

15. Some delegations referred both to subparagraphs (ii) and (iii). It was suggested that both subparagraphs should be further circumscribed on the basis of subject matter. It was also suggested that the language in the subparagraphs could be standardized by using the qualifier "to the extent that" in both. Concerning the expression "entitled to" used in both subparagraphs, the suggestion was made that the source of the entitlement should be made clear. On the other hand, it was noted that the commentary to the article could be used for that purpose. It was suggested that the words "governmental authority" appearing in both subparagraphs should be replaced by the words "sovereign authority". On the other hand, it was also noted that the intention behind the words "governmental authority" had been to bring the draft article into line with the expression used in the International Law Commission draft on State responsibility.

16. As regards, in particular, subparagraph (iii), the suggestion was made to replace the conjunction "or" by the conjunction "and" before the words "other entities".

17. As a result of the discussion the Chairman presented a revised text on this issue which read as follows:

"Item 1
Definition of the State

Principle: For the purposes of jurisdictional immunities of States the expression 'State' includes also, beside the State and its various organs of government, constituent units of a federal government or political subdivisions of the State, which are entitled to perform acts in the exercise of the governmental authority, as well as agencies or instrumentalities of the State or other entities, to the extent that they are entitled to perform acts in the exercise of governmental authority of the State and representatives of the State acting in that capacity.

"Article 2
Use of terms

1. (a) ...

(b) 'State' means:

(i) The State and its various organs of government;

(ii) Constituent units of a federal State *or* political subdivisions of the State, which are entitled to perform acts in the exercise of the governmental authority;

(iii) Agencies or instrumentalities of the State or other entities, to the extent that they are entitled to perform acts in the exercise of governmental authority of the State;

(iv) Representatives of the State acting in that capacity."

18. Some delegations questioned the use of the word "principle" in the initial statement before the actual text of the provision. The Chairman explained that the purpose of the paragraph was only to clarify the basic concept involved in this outstanding issue. Similar paragraphs contained in revised versions of other texts contained in document A/C.6/55/WGJIS/WP.2 also served the same purpose.

19. As regards subparagraphs (ii) and (iii), it was suggested that the word "constitutionally" should be added before the word "entitled" to indicate the source of the entitlement. It was noted however that such an addition might not be acceptable to some federal States whose constituent units may not regard the constitution as the source of this entitlement. The suggestion was also made that the units, subdivisions and entities referred to in the subparagraphs should not only "be entitled to" but actually exercise governmental authority. It was proposed that the words: "provided that it was established that such authorities were acting in such capacity" should be added, mutatis mutandis, to both subparagraphs.

B. Criteria for determining the commercial character of a contract or transaction

20. The initial text submitted by the Chairman on this issue read as follows:

"Item 2
Definition of commercial character of a contract or transaction

Article 2, paragraph 1 (c)

'commercial transaction' means:

(i) Any commercial contract or transaction for the sale of goods or supply of services;

(ii) Any contract for a loan or other transaction of a financial nature, including any obligation of guarantee or of indemnity in respect of any such loan or transaction;

(iii) Any other contract or transaction of a commercial, industrial, trading or professional nature, but not including a contract of employment of persons.

Paragraph 2

Delete the paragraph

OR:

2. In determining whether a contract or transaction is a "commercial transaction" under paragraph 1 (c), the circumstances being most relevant for the case shall be taken into account.

OR:

2. In determining whether a contract or transaction is a "commercial transaction" under paragraph 1 (c), reference should be made primarily to the nature of the contract or transaction, but its purpose should also be taken into account if, at the time of its conclusion, the State which is a party to it has expressly reserved that possibility and the other party has not expressly objected.

OR:

2. In determining whether a contract or transaction is a "commercial transaction" under paragraph 1 (c), reference should be made primarily to the nature of the contract and the purpose for which it is concluded, i.e. whether or not it relates to the carrying out of a public service mission."

21. Some delegations expressed a preference for alternative 1, which would delete paragraph 2 from the draft article and would eliminate any express indication of criteria in the determination of the commercial character of a contract or transaction. These delegations felt that this would be the most appropriate approach as it would leave the room open for the development of State practice and judicial interpretation. Other delegations found that such a deletion would not be very helpful and in practice would probably work in favour of the exclusive application of the nature test to the detriment of the purpose test. Such a deletion would also run counter to one of the goals of the draft articles as a whole, which was to provide guidance to Governments, courts and practitioners.

22. Alternative 2 did not gather much support. Some delegations felt that it was equivalent to a deletion of paragraph 2 since it contained no mention of specific criteria. Other delegations were of the view that the application of the phrase "circumstances being most relevant to the case" would create a great amount of uncertainty. Some other delegations sought to render option 2 more useful by means of additions. One suggestion was to insert after the word "circumstances" the following words: "including the nature of the contract or transaction and, if necessary, its purpose". Another suggestion was to add, after the word "circumstances" the words: "or elements, whether intrinsic or extrinsic".

23. Several delegations expressed support for alternative 3 either on its own merits or as a compromise solution if the alternative to delete paragraph 2 was not generally accepted. They were of the view that, if the purpose criterion were to be applied, both parties to the contract or transaction had to agree to it. It was also suggested that the word "primarily" before the word "nature" should be deleted. Several other delegations expressed objections to alternative 3. Some of those delegations could not accept what they perceived as a "veto power" granted to one of the parties to the contract or transaction in the application of the purpose test.

Other delegations found difficulties with the burden of proof concerning the expression of the will to apply the purpose test or to object to such an application. Some suggestions were made to modify alternative 3. One suggestion was to delete the limitations contained in the last part of the option and to add after the words: "but its purpose should also be taken into account" the words: "according to the circumstances". Another suggestion was to remove the word "primarily" before the word "nature" and to add, after the words "nature of the contract or transaction", the words "and if relevant in any particular case to its purpose". Some other delegations, which were in principle in favour of option 4, expressed a willingness, as a compromise, to work on an improved formulation of option 3.

24. Alternative 4 found favour with a number of delegations that saw it as an appropriate balance between the nature and the purpose tests in the determination of the commercial nature of a contract or transaction. Other delegations in favour of the nature test did not find alternative 4 acceptable and pointed, inter alia, to the difficulties in determining whether the purpose of a contract or transaction related to the carrying out of a public service mission. This test, if interpreted broadly, might apply to all contracts or transactions concluded by a State. A suggestion was made to add, at the end of alternative 4, the last phrase of alternative 3, namely the words: "if, at the time of its conclusion, the State which is a party to it has expressly reserved that possibility and the other party has not expressly objected."

25. As a result of the discussion, the Chairman submitted a revised text on this issue, which read as follows:

"Item 2
Definition of commercial character of a contract or transaction

Principle: The State cannot invoke jurisdictional immunities if it engages in a commercial transaction with a foreign natural or juridical person and, by virtue of the applicable rules of private international law, differences relating to the commercial transaction fall within the jurisdiction of a court of another State, in a proceeding arising out of that commercial transaction.

Alternative I

Article 2
Use of terms

1. (a) ...

(b) 'State' means: ...

(c) 'Commercial transaction' means:

(i) Any commercial contract or transaction for the sale of goods or supply of services;

(ii) Any contract for a loan or other transaction of a financial nature, including any obligation of guarantee or of indemnity in respect of any such loan or transaction;

(iii) Any other contract or transaction of a commercial, industrial, trading or professional nature, but not including a contract of employment of persons.

2. Delete

Alternative II

Article 2
Use of terms

1. (a) ...

(b) 'State' means: ...

(c) 'Commercial transaction' means:

(i) Any commercial contract or transaction for the sale of goods or supply of services;

(ii) Any contract for a loan or other transaction of a financial nature, including any obligation of guarantee or of indemnity in respect of any such loan or transaction;

(iii) Any other contract or transaction of a commercial, industrial, trading or professional nature, but not including a contract of employment of persons.

2. In determining whether a contract or transaction is a 'commercial transaction' under paragraph 1 (c), reference should be made to the nature of the contract *as well as to its purpose for which it is concluded, i.e. whether or not it relates to the carrying out of a public service mission, provided that the State which is a party to it has expressly reserved that possibility and the other party has not expressly objected.*"

26. Some delegations expressed a clear preference for alternative I for the reasons expressed in paragraph 21 above. Other delegations were opposed to such an alternative, also for the reasons pointed out in that paragraph.

27. A number of delegations supported alternative II, as drafted, and characterized it as an acceptable compromise between the nature test and the purpose test. Some other delegations, while favouring alternative II, suggested some amendments to it. One suggestion was to add, in paragraph 2, after the words "nature of the contract as well as", the following words: "if it is relevant under the national legislation of the State which is a party to it or the law applicable to the transaction" and to delete the final part of the paragraph starting with the words "provided that". In another suggestion, the preceding formulation should speak rather of "the law which the parties have agreed to apply to the transaction". In still another suggestion, it was proposed to add the words "all relevant evidence should be considered" after the words "under paragraph 1 (c)". Some other delegations were opposed to alternative II, although not necessarily for the same reasons. While, in one view, the alternative unacceptably placed on a par the nature test with the purpose test, in another view alternative II would jeopardize the applicability of the purpose test.

28. Some delegations expressed a preference for the original formulation of the draft article contained in the 1991 draft of the International Law Commission.

C. Concept of a State enterprise or other entity in relation to commercial transactions

29. The initial text submitted by the Chairman on this issue read as follows:

"Item 3
Concept of a State enterprise or other entity in relation to commercial transactions

Article 10

3. The immunity from jurisdiction enjoyed by a State shall not be affected with regard to a proceeding which relates to a commercial transaction engaged in by a State enterprise or other entity established by a State which has an independent legal capacity or is capable of:

(a) Suing or being sued;

(b) Acquiring, owning or possessing or disposing of property, including property which the State has authorized it to operate or manage.

OR:

3. Delete paragraph 3.

OR:

Article 10 a (new)
State enterprise

1. A State enterprise or other entity established by a State does not enjoy State immunity for commercial contracts engaged by it if and to the extent it has an independent legal capacity or is capable of:

(a) Suing or being sued;

(b) Acquiring, owning or possessing or disposing of property, including property which the State has authorized it to operate or manage.

2. Paragraph 1 applies also to a commercial transaction engaged in by a State enterprise or other entity established by a State,

(i) If this State enterprise or other entity acts as an authorized agent of the State; or

(ii) The State acts as guarantor of a liability to be assumed by this State enterprise or other entity.

3. The immunity from jurisdiction enjoyed by a State shall not be affected with regard to a proceeding which relates to a commercial transaction engaged in by a State enterprise or other entity established by a State to which paragraph 1 applies."

30. A number of comments and suggestions were made on the above three options.

31. As regards option 1 on this item, there were divergent views. A number of delegations supported the text proposed by the Chairman. Some of these delegations considered that the first part of the option should be replaced by the first part

(paragraph 1) of option 3 as the wording was clearer. Other delegations made some drafting suggestions. A view suggested to rephrase the text so as to ensure that it did not look as if it is the State which has the independent legal capacity. Another view suggested the simplification of this option including by the deletion of subparagraph (b).

32. A number of delegations were opposed to option 1, as it omitted the qualification that the immunity of the State enterprise applied only in circumstances where it acted as an authorized agent of the State or where the State acted as a guarantor of a liability assumed by the State enterprise.

33. As regards option 2, several delegations supported deleting paragraph 3 in its entirety as superfluous. Other delegations were in favour of retaining it.

34. As regards option 3, there were also divergent views. A number of delegations pointed out that it was unclear to them how it would operate in practice.

35. Other delegations were prepared to accept this option in principle provided that the issue of the under-capitalization of a State enterprise was addressed. The view was also made that paragraph 3 should be deleted, leaving only paragraphs 1 and 2 of option 3.

36. Several delegations that supported option 1 in principle were willing to work on the basis of option 3.

37. As a result of the discussion, the Chairman presented a revised text on this issue which read as follows:

"Item 3
Concept of a State enterprise or other entity in relation to commercial transactions

Principle: A State enterprise or other entity established by a State does not enjoy State immunity for commercial contracts engaged by it if and to the extent this enterprise or entity has an independent legal capacity and is capable of suing or being sued, and acquiring, owning or possessing or disposing of property, including property which the State has authorized it to operate or manage.

Alternative I

Article 10
Commercial transactions

3. The immunity from jurisdiction enjoyed by a State shall not be affected with regard to a proceeding which relates to a commercial transaction engaged in by a State enterprise or other entity established by a State which has an independent legal capacity *and* is capable of:

(a) Suing or being sued, *and*

(b) Acquiring, owning or possessing or disposing of property, including property which the State has authorized it to operate or manage.

Alternative II

Article 10
Commercial transactions

3. A State enterprise or other entity established by a State does not enjoy State immunity for commercial contracts engaged by it if and to the extent it has an independent legal capacity *and* is capable of:

(a) Suing or being sued, *and*

(b) Acquiring, owning or possessing or disposing of property, including property which the State has authorized it to operate or manage."

38. Several delegations noted their preference for either one or the other alternatives mentioned above and made a number of comments and suggestions on them. Some delegations indicated their flexibility to support either alternative.

39. Several delegations expressed their preference for alternative I. It was noted that this alternative corresponded to the original paragraph 3 of draft article 10 of the Commission's 1991 draft article and was clearer and reflected more accurately the existing practice. The view was also expressed that alternative I was more in keeping with the overall aim of the draft articles as a whole in that the emphasis was on the State's immunity not being affected in the event that a State enterprise or other entity is sued.

40. Other delegations reiterated their objection to a provision that did not expressly state that the State enterprise or other entity was acting as an agent of the State, or that the State was acting as a guarantor of a liability assumed by the State enterprise or other entity.

41. Alternative II was also supported by a number of delegations. Some delegations noted however that whilst this alternative was clearer, it presented the possibility of an *a contrario* interpretation being applied to it to the extent that if the State enterprise or other entity did not have independent legal capacity it would automatically enjoy State immunity in respect of commercial transactions. It was also suggested that the term "commercial transaction" be substituted for "commercial contract".

D. Contracts of employment

42. The initial text submitted by the Chairman on this issue read as follows:

"Item 4
Contracts of employment

Article 11

2. Paragraph 1 does not apply if:

(a) The employee has been recruited to perform functions in the exercise of governmental authority, in particular, diplomatic staff and consular officers, as defined in the Vienna Convention on Diplomatic Relations of 1961 as well as in the Vienna Convention on Consular Relations of 1963, diplomatic

staff of permanent missions to international organizations, members of special missions, persons recruited to represent a State in international conferences and other persons enjoying diplomatic immunity;

(c) *Delete the subparagraph.*"

43. A number of delegations supported the text as proposed by the Chairman. It was noted that the vagueness introduced by the phrase "closely related to" had been removed.

44. Other delegations suggested some drafting amendments. It was suggested to replace "in particular" with "such as" in order to emphasize the fact that this was a non-exhaustive list of categories of employees. It was also suggested to delete the reference to "diplomatic staff and consular officers" and to insert language along the lines of "persons falling within the scope of the respective Conventions".

45. Some delegations considered that the formulation of subparagraph (a) as proposed by the Chairman was too limited and that other categories of employees should be specified. These might include administrative and technical staff, press officers, protocol officers, as well as other employees recruited to perform functions relating to missions.

46. Other delegations expressed the view that it would not be appropriate to list all possible categories of employees. It was also suggested to shorten the list in the subparagraph and to make a reference to further categories of employees in a Commentary to the draft article.

47. As regards subparagraph (c) there was general agreement to follow the suggestion of the Chairman to delete the subparagraph.

48. It was also noted that as regards subparagraph (d) of draft article 11, an exception concerning nationals of the employer State having permanent residence in the forum State should be inserted.

49. As a result of the discussion, the Chairman presented a revised text on this issue which read as follows:

"Item 4
Contracts of employment

Principle: A State cannot invoke immunity from jurisdiction before a court of another State that is otherwise competent in a proceeding that relates to a contract of employment between the State and an individual unless:

–The employee has been recruited to perform functions in the exercise of governmental authority;

–The subject of the proceeding is the recruitment, renewal of employment or reinstatement of an individual;

–The employee is a national of the employer State at the time when the proceeding is instituted, and this person has permanent residence outside the forum State; or

–The employer State and the employee have otherwise agreed in writing, subject to any considerations of public policy conferring on the courts of the

State of the forum exclusive jurisdiction by reason of the subject-matter of the proceeding.

Article 11
Contracts of employment

2. Paragraph 1 does not apply if:

(a) The employee has been recruited to perform functions in the exercise of governmental authority, *such as* diplomatic staff and consular officers, as defined in the Vienna Convention on Diplomatic Relations of 1961 as well as in the Vienna Convention on Consular Relations of 1963, diplomatic staff of permanent missions to international organizations, members of special missions, persons recruited to represent a State in international conferences and other persons enjoying diplomatic immunity;

(c) Delete

(d) The employee is a national of the employer State at the time when the proceeding is instituted, *unless this person has the permanent residence in the forum State*; or ..."

50. Several delegations expressed their support for the revised text. These delegations noted that the proposed text struck the appropriate balance and better reflected the intention behind the original provision as proposed by the Commission.

51. Other delegations were of the opinion that the list of categories in subparagraph (a) should be expanded to provide for a wider category of persons, in particular for technical and administrative personnel. A view was that the qualifier "such as" was too specific and would be incompatible with the national legislation of some delegations. It was suggested to replace "such as" with "including" and to delete "other persons enjoying diplomatic immunity". The suggestion was also made to insert the word "particular" before "functions" and to replace "diplomatic staff and consular officers" with "members of a diplomatic and consular mission", thereby broadening the categories of employees covered by subparagraph (a).

52. A view was expressed that the phrase "closely related to" as originally suggested by the Commission was preferable to the phrase "in the exercise of governmental authority". Another view considered that the expression "closely related to" unduly extended the scope of the provision. A suggestion was made to add the phrase "or closely related to such exercise" after "governmental authority" in order to distinguish between the direct exercise of functions and those functions that are closely related to such exercise of functions. One view expressed concern over this latter proposal. It was also proposed to substitute "State authority" for "governmental authority" although this also met with some objection.

E. Measures of constraint against State property

53. The initial text submitted by the Chairman on this issue read as follows:

"Item 5
Measures of constraint

Article 18
State immunity from measures of constraint

1. No pre-judgement measures of constraint against property of a State may be taken in connection with a proceeding before a court of another State unless and to the extent that:

(a) The State has expressly consented to the taking of such measures as indicated:

(i) By international agreement;

(ii) By an arbitration agreement or in a written contract;

(iii) In any other manner by a validly given declaration;

(b) The State has allocated or earmarked property for the satisfaction of the claim that is the object of that proceeding.

2. No post-judgement measures of constraint, such as attachment, arrest and execution, against property of a State may be taken in connection with a proceeding before a court of another State unless and to the extent that:

(a) The State has expressly consented to the taking of such measures as indicated:

(i) By international agreement;

(ii) By an arbitration agreement or in a written contract;

(iii) In any other manner by a validly given declaration; or

(b) The State has allocated or earmarked property for the satisfaction of the claim that is the object of that proceeding.

This paragraph is without prejudice to any other legal grounds for taking such measures against the property of a State in connection with a proceeding before a court of another State.

OR:

1. No measures of constraint, such as attachment, arrest and execution, against property of a State may be taken in connection with a proceeding before a court of another State unless and to the extent that:

(a) The State has expressly consented to the taking of such measures as indicated:

(i) By international agreement;

(ii) By an arbitration agreement or in a written contract;

(iii) In any other manner by a validly given declaration; or

(b) The State has allocated or earmarked property for the satisfaction of the claim that is the object of that proceeding.

2. The preceding paragraph is without prejudice to any other legal grounds for taking such measures against the property of a State in connection with a proceeding before a court of another State.

OR:

A State is obliged to give effect to a final judgement given against it by a court of another State if the former cannot claim immunity in the proceedings, unless this obligation would contradict the *ordre public* of that State."

54. A number of comments and suggestions were made on the above three options.

55. As regards option 1, there were divergent views. Some delegations generally supported the distinction between pre-judgement and post-judgement measures of constraint. A view was expressed however that in practice the distinction may not make much difference. It was suggested that the same sentence found at the end of paragraph 2 of option 1, to the effect that the paragraph is "without prejudice to any other legal grounds for taking such measures against the property of a State in connection with a proceeding before a court of another State", should be also inserted at the end of paragraph 1.

56. Other delegations were completely opposed to a distinction between pre-judgement and post-judgement measures of constraint.

57. As regards option 2, several delegations expressed their preference for this option subject to certain clarifications. Some drafting amendments were suggested. A proposal was made to insert wording to the effect that the option would apply to both pre-judgement and post-judgement measures of constraint. The suggestion was also made to insert into option 2 subparagraph 1 (c) of draft article 18 of the Commission's 1991 draft articles. A view also suggested that the word "treaty" be substituted for the word "agreement" in subparagraph (a) (i) and that subparagraph (a) (iii) be reformulated to read: "by a validly given unilateral declaration".

58. Some delegations expressed their concern over the breadth and clarity of the expression "other legal grounds" contained in paragraph 2. The suggestion was made to qualify these words with the word "international". A view suggested the deletion of paragraph 2 in this option but that it may still apply to the situation of pre-judgement measures of constraint in option 1.

59. As regards option 3, a number of delegations were not in favour of this option as they considered the concept of *ordre public* to be too ambiguous. On the other hand, the view was also expressed that the concept was well known in law and that its application should pose no problem.

60. The view was expressed that all three options were too restrictive. This view considered that, in accordance with its own national legislation, States should be treated in the same way as a private party.

61. A number of other options were also suggested. One was the inclusion of the original draft article 18 of the Commission's 1991 draft articles as an option. Another was the creation of a new option that combines paragraph 1 of option 1, the last sentence of paragraph 2 of option 1 and option 3. A number of delegations supported the second proposal.

62. It was also noted that whatever changes are made to article 18 would require a consequential adjustment to other relevant articles, in particular to draft article 19.

63. As a result of the discussion, the Chairman presented a revised text on this issue which read as follows:

"Item 5
Measures of constraint against State property

Principle: Unless the State has expressly consented either ad hoc or in advance, or the measures of constraint, such as attachment, arrest and execution, taken by a court of another State against the property of the former involve property designated to satisfy the claim, no such act may be taken in connection with a proceeding before a court of another State except in certain well-defined circumstances according to applicable rules of international law, and against property which is not used for governmental purposes. Nevertheless, the State remains bound to satisfy the final judgement to the extent that it does not contradict its *ordre public*.

Alternative I

Article 18
State immunity from measures of constraint

1. No pre-judgement measures of constraint against property of a State may be taken in connection with a proceeding before a court of another State unless and to the extent that:

(a) The State has expressly consented to the taking of such measures as indicated:

(i) By international agreement;

(ii) By an arbitration agreement or in a written contract; *or*

(iii) In any other manner by a validly given declaration; *or*

(b) The State has allocated or earmarked property for the satisfaction of the claim that is the object of that proceeding.

2. No post-judgement measures of constraint, such as attachment, arrest and execution, against property of a State may be taken in connection with a proceeding before a court of another State unless and to the extent that:

(a) The State has expressly consented to the taking of such measures as indicated:

(i) By international agreement;

(ii) By an arbitration agreement or in a written contract; *or*

(iii) In any other manner by a validly given declaration; *or*

(b) The State has allocated or earmarked property for the satisfaction of the claim that is the object of that proceeding.

This paragraph is without prejudice to any other legal grounds *based on applicable rules of international law* for taking such measures against the property of a State in connection with a proceeding before a court of another State.

Alternative II

Article 18
State immunity from measures of constraint

1. *No pre-judgement measures of constraint against property of a State may be taken in connection with a proceeding before a court of another State unless and to the extent that*:

(a) *The State has expressly consented to the taking of such measures as indicated*:

(i) *By international agreement;*

(ii) *By an arbitration agreement or in a written contract; or*

(iii) *In any other manner by a validly given declaration; or*

(b) *The State has allocated or earmarked property for the satisfaction of the claim that is the object of that proceeding.*

This paragraph is without prejudice to any other legal grounds based on applicable rules of international law for taking such measures against the property of a State in connection with a proceeding before a court of another State.

2. *A State is obliged to give effect to a final judgement given against it by a court of another State if the former cannot claim immunity in the proceedings, unless this obligation would contradict the* ordre public *of that State.*

Alternative III

Article 18
State immunity from measures of constraint

1. No measures of constraint, such as attachment, arrest and execution, against property of a State may be taken in connection with a proceeding before a court of another State unless and to the extent that:

(a) The State has expressly consented to the taking of such measures as indicated:

(i) By international agreement;

(ii) By an arbitration agreement or in a written contract; or

(iii) In any other manner by a validly given declaration; or

(b) The State has allocated or earmarked property for the satisfaction of the claim that is the object of that proceeding.

2. The preceding paragraph is without prejudice to any other legal grounds based on applicable rules of international law for taking such measures against the property of a State in connection with a proceeding before a court of another State.

Alternative IV

Article 18
State immunity from measures of constraint

A State is obliged to give effect to a final judgement given against it by a court of another State if the former cannot claim immunity in the proceedings, unless this obligation would contradict the *ordre public* of that State.

[Article 19
Specific categories of property

1. *Unless it appears from the circumstances that the State has consented to it, the following categories, in particular, of property of a State shall not be considered as property against which measures of constraint, such as attachment, arrest and execution, against property of a State may be taken in connection with a proceeding before a court of another State*:

(a) *Property, including any bank account, that is used or intended for the purposes of the diplomatic mission of the State or its consular posts, special missions, missions to international organizations, or delegations to organs of international organizations or to international conferences*;

(b) *Property of a military character or used or intended for use for military purposes*;

(c) *Property of the central bank or other monetary authority of the State*;

(d) *Property forming part of the cultural heritage of the State or part of its archives and not placed or intended to be placed on sale*;

(e) *Property forming part of an exhibition of objects of scientific, cultural or historical interest and not placed or intended to be placed on sale*.

2. *Delete]*"

64. Delegations continued to express widespread divergent views on this item. Several delegations noted their preference for either one or more of the various alternatives proposed in the revised text of the Chairman. Some delegations were prepared to maintain flexibility towards the various alternatives while other delegations noted their strong preference for either one or several alternatives.

65. A number of delegations reiterated their preference for the original text of draft article 18 as proposed by the Commission in its 1991 draft articles on the topic.

66. As regards the notion of *ordre public* found in the *Principle* and alternatives II and IV, several delegations reiterated their concern regarding the ambiguity of this concept. A view suggested to qualify these words by the word "international". Another view considered however that the notion of *ordre public* was to be interpreted in a flexible manner and was common to many national jurisdictions.

67. As regards alternative I, several delegations continued to express a preference for a distinction between pre-judgement and post-judgement measures of constraint. It was noted that the first sentence of alternative I would be better reformulated in a

positive way by deleting the word "No" at the beginning of the sentence and by substituting the words "unless and to the extent that" by "if".

68. A number of delegations supported the notion of consent in respect of pre-judgement measures of constraint. As regards post-judgement measures of constraint, it was proposed to insert a grace period of two to three months for the voluntary execution of the judgement.

69. The view was expressed that while alternative I was generally clearer as compared to the other alternatives there remained ambiguity in the last part of paragraph 2 relating to "other legal grounds based on applicable rules of international law". It was suggested that examples might be given of these applicable rules of international law.

70. As regards alternative III, some delegations expressed their preference for this alternative. It was noted that this alternative was broad and flexible and did not complicate the issues by making a distinction between pre- and post-judgement measures of constraint.

71. A view which supported this alternative reiterated the suggestion to change the word "agreement" in subparagraph (a) (ii) to "treaty" and to reformulate subparagraph (iii) as follows: "by a validly given unilateral declaration". This view also suggested that the phrase "based on applicable rules of international law" should be replaced by the words "based on applicable treaty rules". It was also suggested to retain article 18 (c) and article 19 of the 1991 draft articles.

72. As a result of the discussion, the Chairman presented a further revised text on this issue which read as follows:

"Item 5
Measures of constraint against State property

Principle: Unless the State has expressly consented either ad hoc or in advance, or the measures of constraint, such as attachment, arrest and execution, taken by a court of another State against the property of the former involve property designated to satisfy the claim, no such act may be taken in connection with a proceeding before a court of another State except in certain well-defined circumstances according to applicable rules of international law, and against property which is not used for governmental purposes.

Alternative I

Article 18
State immunity from measures of constraint

1. No measures of constraint, such as attachment, arrest and execution, against property of a State may be taken in connection with a proceeding before a court of another State unless and except to the extent that:

(a) the State has expressly consented to the taking of such measures as indicated:

(i) By international agreement;

(ii) By an arbitration agreement or in a written contract; or

(iii) By a declaration before the court or by a written communication after a dispute between the parties has arisen; or

(b) The State has allocated or earmarked property for the satisfaction of the claim that is the object of that proceeding; or

(c) The property is specifically in use or intended for use by the State for other than government non-commercial purposes and is in the territory of the State of the forum and has a connection with the claim that is the object of the proceeding or with the agency or instrumentality against which the proceeding was directed.

2. Consent to the exercise of jurisdiction under article 7 shall not imply consent to the taking of measures of constraint under paragraph 1, for which separate consent shall be necessary.

Alternative II

Article 18
State immunity from measures of constraint

1. No measures of constraint, such as attachment, arrest and execution, against property of a Stare may be taken in connection with a proceeding before a court of another State unless and except to the extent that:

(a) The State has expressly consented to the taking of such measures as indicated:

(i) By international agreement;

(ii) By an arbitration agreement or in a written contract; or

(iii) By a declaration before the court or by a written communication after a dispute between the parties has arisen; or

(b) The State has allocated or earmarked property for the satisfaction of the claim which is the object of that proceeding; or

(c) The property is specifically in use or intended for use by the State for other than government non-commercial purposes and is in the territory of the State of the forum.

2. Consent to the exercise of jurisdiction under article 7 shall not imply consent to the taking of measures of constraint under paragraph 1, for which separate consent shall be necessary.

Alternative III

Article 18
State immunity from measures of constraint

1. No measures of constraint, irrespective of whether pre-judgement or post-judgement measures, against property of a State may be taken in connection with a proceeding before a court of another State unless and except to the extent that:

(a) The State has expressly consented to the taking of such measures as indicated:

(i) By international agreement;

(ii) By an arbitration agreement or in a written contract; or

(iii) In any other manner by a validly given declaration; or

(b) The State has allocated or earmarked property for the satisfaction of the claim that is the object of that proceeding.

2. In other cases than those mentioned above, where such post-judgement measures are taken, the State against which a final judgement was rendered shall be granted a three months grace period to comply with the judgement unless the applicable rules of international law provide otherwise.

3. Consent to the exercise of jurisdiction under article 7 shall not imply consent to the taking of measures of constraint under paragraph 1, for which separate consent shall be necessary.

Alternative IV

Article 18
State immunity from measures of constraint

1. No measures of constraint, such as attachment, arrest and execution, against property of a State may be taken in connection with a proceeding before a court of another State unless and except to the extent that:

(a) The State has expressly consented to the taking of such measures as indicated:

(i) By international agreement;

(ii) By an arbitration agreement or in a written contract; or

(iii) In any other manner by a validly given declaration; or

(b) The State has allocated or earmarked property for the satisfaction of the claim that is the object of that proceeding.

2. In other cases than those mentioned above, where such measures are taken, the State against which a final judgement was rendered shall be granted a three months grace period to comply with the judgement unless the applicable rules of international law provide otherwise.

3. Consent to the exercise of jurisdiction under article 7 shall not imply consent to the taking of measures of constraint under paragraph 1, for which separate consent shall be necessary."

73. Delegations made various comments and suggestions on the Chairman's second revised text on this item. A number of delegations stated a clear preference for one alternative, subject to certain amendments. Other delegations were prepared to be flexible towards several alternatives.

74. Some delegations supported alternative I as the basis for further discussion. The suggestion was made to include the words "whether pre-judgement or post-judgement measures of constraint".

75. Other delegations noted their preference to work on the basis of alternative II but indicated a measure of flexibility toward working on alternative I as a basis for further discussion.

76. Several delegations expressed a preference towards alternative II. It was noted that the text was concise, simpler and more direct. However, it was considered that the text would be improved if this alternative distinguished between pre-judgement and post-judgement measures of constraint.

77. As regards subparagraph (a) (iii) of alternatives I and II, the view was expressed that the reference to written communication was unclear and that it might be necessary to specify to whom the communication is made. A view also suggested the addition of the word "valid" before "declaration".

78. As regards subparagraph (c) of alternatives I and II, the suggestion was made to introduce an objective element into the text that would take away the need to establish the intention of the State to the use of the property by adding at the beginning of the sentence "It is established that" or by deleting the reference to "intention". Several delegations supported this suggestion. The view was also expressed that a linkage should be made between the property of the State and the claim.

79. Some delegations considered that the formulation in subparagraph (c) of alternative II might be too broad. The view was expressed that subparagraph (b) might achieve the same objective. A number of delegations noted their preference for the inclusion of the formulation found in subparagraph (c) of alternative I into alternative II. The view was also expressed in support of the existing formulation in subparagraph (c) of alternative II.

80. Another view considered it necessary to ensure consistency between the consent requirement in paragraph 2 and subparagraph (c) and suggested to add the phrase "and the State has expressly consented to the taking of measures of constraint" at the end of subparagraph (c).

81. It was also suggested to reformulate subparagraph (c) as a separate distinct paragraph of article 18.

82. Some delegations expressed a preference to use alternative III as a basis for further discussions. In this regard, it was considered that subparagraph (c) of alternative II should be added to this alternative. The view was expressed that the reference to a grace period in paragraph 2 of alternative III would introduce an element of uncertainty as to the status of property during the period.

83. As regards alternative IV, no substantive comments or suggestions were made, nor was any support expressed for this alternative.

IV. Future course of action to be taken with regard to the topic

84. A number of delegations expressed the view that, whatever the final form of the future instrument on the topic, after consideration of the International Law

Commission draft articles for almost 10 years in working groups or informal consultations of the Sixth Committee, the time had come for convening a more formal body. This body, which could be an ad hoc committee or a preparatory commission, should have as its main mandate either the preparation of a basic document for a diplomatic conference to draft an international convention on the topic or of a legal document consisting of a model law of legal principles which could serve as guideline to governments, courts and practitioners.

85. A number of other delegations were of the view that the idea of convening a body along the lines described in the preceding paragraphs was premature. In their view, substantive differences still remained on basic and key issues of the draft. Without prior agreement on those issues such a body or a diplomatic conference were bound to fail. And an agreement on such issues was almost impossible to obtain because the law and state practice were still shifting on those issues.

86. On the question whether the final instrument should be a binding instrument or some form of soft law document such as a model law or guidelines, similar conflicting views to those already reflected in paragraphs 6 to 9 of the general exchange of views above were expressed.

87. Some delegations, that supported the establishment of a more formal body to deal with the topic in the future noted that, in spite of the difficulties involved in the outstanding issues, it was clear that some measure of progress had been achieved both at the previous and present sessions of the Working Group. Although some controversial points still remained to be solved, they were really very few in comparison with the numerous political and technical difficulties that past diplomatic conferences on legal matters, including the Rome Conference on the International Criminal Court, had had to negotiate and solve in the space of a few weeks. The purpose of political bodies such as ad hoc committees, preparatory commissions and diplomatic conferences was precisely the negotiation of the most difficult problems pending in the drafting of a legal instrument.

V. Suggestions by the Chairman for further work on the topic

88. In the light of the discussions held within the Working Group of the Sixth Committee at the fifty-fifth session of the General Assembly, the following texts could be seen as constituting a possible basis for further discussions:

Item 1
Definition of the State

Basic concept of this item: For the purposes of jurisdictional immunities of States the expression "State" includes also, beside the State and its various organs of government, constituent units of a federal State or political subdivisions of the State, which are entitled to perform acts in the exercise of the sovereign authority, as well as agencies or instrumentalities of the State or other entities, to the extent that they are entitled to perform acts in the exercise of sovereign authority of the State and representatives of the State acting in that capacity.

Article 2
Use of terms

1. (a) ...

(b) "State" means:

(i) The State and its various organs of government;

(ii) Constituent units of a federal State or political subdivisions of the State, which are entitled to perform acts in the exercise of the sovereign authority, provided that it was established that such entities were acting in that capacity;

(iii) Agencies or instrumentalities of the State or other entities, to the extent that they are entitled to perform and are actually performing acts in the exercise of sovereign authority of the State;

(iv) Representatives of the State acting in that capacity.

Item 2
Definition of commercial character of a contract or transaction

Basic concept of this item: The State cannot invoke jurisdictional immunities if it engages in a commercial transaction with a foreign natural or juridical person and, by virtue of the applicable rules of private international law, differences relating to the commercial transaction fall within the jurisdiction of a court of another State, in a proceeding arising out of that commercial transaction.

Alternative I

Article 2
Use of terms

1. (a) ...

(b) "State" means: ...

(c) "Commercial transaction" means:

(i) Any commercial contract or transaction for the sale of goods or supply of services;

(ii) Any contract for a loan or other transaction of a financial nature, including any obligation of guarantee or of indemnity in respect of any such loan or transaction;

(iii) Any other contract or transaction of a commercial, industrial, trading or professional nature, but not including a contract of employment of persons.

2. Delete

Alternative II

Article 2
Use of terms

1. (a) ...

(b) "State" means: ...

(c) "Commercial transaction" means:

(i) Any commercial contract or transaction for the sale of goods or supply of services;

(ii) Any contract for a loan or other transaction of a financial nature, including any obligation of guarantee or of indemnity in respect of any such loan or transaction;

(iii) Any other contract or transaction of a commercial, industrial, trading or professional nature, but not including a contract of employment of persons.

2. In determining whether a contract or transaction is a "commercial transaction" under paragraph 1 (c), reference should be made to the nature of the contract as well as to its purpose for which it is concluded, i.e. whether or not it relates to the carrying out of a public service mission, provided that the State which is a party to it has expressly reserved that possibility and the other party has not expressly objected.

Alternative III

Article 2
Use of terms

1. (a) ...

(b) "State" means: ...

(c) "Commercial transaction" means:

(i) Any commercial contract or transaction for the sale of goods or supply of services;

(ii) Any contract for a loan or other transaction of a financial nature, including any obligation of guarantee or of indemnity in respect of any such loan or transaction;

(iii) Any other contract or transaction of a commercial, industrial, trading or professional nature, but not including a contract of employment of persons.

2. In determining whether a contract or transaction is a "commercial transaction" under paragraph 1 (c), reference should be made to the nature of the transaction as well as, in accordance with the national legislation of the State which is a party to the contract or transaction, to its purpose for which it is concluded, i.e. whether or not it relates to the carrying out of a public

service mission, provided that it has not been agreed upon otherwise by the parties to the contract or transaction.

Item 3
Concept of a State enterprise or other entity in relation to commercial transactions

Basic concept of this item: A State enterprise or other entity established by a State does not enjoy State immunity to the extent this enterprise or entity has an independent legal capacity and is capable of suing or being sued, and acquiring, owning or possessing or disposing of property, including property which the State has authorized it to operate or manage.

Alternative I

Article 10
Commercial transactions

3. The immunity from jurisdiction enjoyed by a State shall not be affected with regard to a proceeding which relates to a commercial transaction engaged in by a State enterprise or other entity established by a State which has an independent legal capacity and is capable of:

(a) Suing or being sued, and

(b) Acquiring, owning or possessing or disposing of property, including property which the State has authorized it to operate or manage.

Alternative II

Article 10
Commercial transactions

3. Without prejudice to the other provisions, a State enterprise or other entity established by a State does not enjoy State immunity to the extent it has an independent legal capacity and is capable of:

(a) Suing or being sued, and

(b) Acquiring, owning or possessing or disposing of property, including property which the State has authorized it to operate or manage.

Item 4
Contracts of employment

Basic concept of this item: A State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to a contract of employment between the State and an individual unless

–The employee has been recruited to perform functions in the exercise of governmental authority, including persons enjoying diplomatic immunities;

–The subject of the proceeding is the recruitment, renewal of employment or reinstatement of an individual;

–The employee is a national of the employer State at the time when the proceeding is instituted, and this person has the permanent residence outside the forum State; or

–The employer State and the employee have otherwise agreed in writing, subject to any considerations of public policy conferring on the courts of the State of the forum exclusive jurisdiction by reason of the subject matter of the proceeding.

Article 11
Contracts of employment

2. Paragraph 1 does not apply if:

(a) The employee has been recruited to perform particular functions in the exercise of governmental authority;

(a bis) Members of the diplomatic staff and consular officers, as defined in the Vienna Convention on Diplomatic Relations of 1961 as well as in the Vienna Convention on Consular Relations of 1963, diplomatic staff of permanent missions to international organizations, members of special missions, persons recruited to represent a State at international conferences and other persons enjoying diplomatic immunity;

(c) Delete

(d) The employee is a national of the employer State at the time when the proceeding is instituted, unless this person has the permanent residence in the forum State; or ...

Item 5
Measures of constraint against State property

Basic concept of this item: Unless:

–The State has expressly consented either ad hoc or in advance to measures of constraint, such as attachment, arrest and execution, taken by a court of another State against the property of the former, or

–The measures of constraint, such as attachment, arrest and execution, taken by a court of another State against the property of the former involve property designated to satisfy the claim,

no such act may be taken in connection with a proceeding before a court of another State except in certain well defined circumstances according to applicable rules of international law, and against property that is not used for governmental purposes.

New article XY (preceding article 18)
Pre-judgement measures of constraint

No pre-judgement measures of constraint, such as attachment, arrest and execution, against property of a State may be taken in connection with a proceeding before a court of another State unless and except to the extent that:

(a) The State has expressly consented to the taking of such measures as indicated:

(i) By international agreement;

(ii) By an arbitration agreement or in a written contract; or

(iii) By a declaration before the court or by a written communication after a dispute between the parties has arisen; or

(b) The State has allocated or earmarked property for the satisfaction of the claim which is the object of that proceeding.

New article 18 bis (following article 18)

Where consent to the measures of constraint is required under article XY and article 18, consent to the exercise of jurisdiction under article 7 shall not imply consent to the taking of measures of constraint.

Alternative I

Article 18
State immunity from post-judgement measures of constraint

1. No post-judgement measures of constraint, such as attachment, arrest and execution, against property of a State may be taken in connection with a proceeding before a court of another State unless and except to the extent that:

(a) The State has expressly consented to the taking of such measures as indicated:

(i) By international agreement;

(ii) By an arbitration agreement or in a written contract; or

(iii) By a declaration before the court or by a written communication after a dispute between the parties has arisen; or

(b) The State has allocated or earmarked property for the satisfaction of the claim that is the object of that proceeding; or

(c) It has been established that the property is specifically in use or intended for use by the State for other than government non-commercial purposes and is in the territory of the State of the forum [and has a connection with the claim that is the object of the proceeding or with the agency or instrumentality against which the proceeding was directed].

Alternative II

Article 18
State immunity from measures of constraint

1. No post-judgement measures of constraint, such as attachment, arrest and execution, against property of a State may be taken in connection with a proceeding before a court of another State unless and except to the extent that:

(a) The State has expressly consented to the taking of such measures as indicated:

(i) By international agreement;

(ii) By an arbitration agreement or in a written contract; or

(iii) By a declaration before the court or by a written communication after a dispute between the parties has arisen; or

(b) The State has allocated or earmarked property for the satisfaction of the claim that is the object of that proceeding.

2. In cases other than those mentioned above, no measures of constraint shall be taken against the property of a State against which a final judgement was rendered by a court of another State before the former State is granted a three months grace period to comply with this judgement unless the applicable rules of international law provide otherwise. If the State has not complied with the judgement within this period, measures of constraint may be taken against the property of this State, where it has been established that it is specifically in use or intended for use by the State for other than government non-commercial purposes and is in the territory of the State of the forum.

United Nations A/C.6/55/L.13

General Assembly

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8 November 2000

Original: English

Fifty-fifth session
Sixth Committee
Agenda item 171
Observer status for the Inter-American Development Bank in the General Assembly

Argentina, Barbados, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Peru, Portugal, Saint Vincent and the Grenadines, Trinidad and Tobago, United States of America, Uruguay and Venezuela: draft resolution

Observer status for the Inter-American Development Bank in the General Assembly

The General Assembly,

Wishing to promote cooperation between the United Nations and the Inter-American Development Bank,

1. *Decides* to invite the Inter-American Development Bank to participate in the sessions and the work of the General Assembly in the capacity of observer;

2. *Requests* the Secretary-General to take the necessary action to implement the present resolution.

00-73535 (E) 081100

United Nations A/C.6/55/L.14

General Assembly

Distr.: Limited
15 November 2000

Original: English

Fifty-fifth session
Sixth Committee
Agenda item 172
Observer status for the International Institute for Democracy and Electoral Assistance in the General Assembly

Draft decision

Observer status for the International Institute for Democracy and Electoral Assistance in the General Assembly

At its ... plenary meeting, on ..., the General Assembly, on the recommendation of the Sixth Committee, decided to resume its consideration of and defer a decision on the request for observer status for the International Institute for Democracy and Electoral Assistance in the General Assembly[1] to its fifty-sixth session and to include in the provisional agenda of that session the item entitled "Observer status for the International Institute for Democracy and Electoral Assistance in the General Assembly."

[1] A/55/226.

00-74922 (E) 151100

United Nations A/C.6/55/L.15

General Assembly

Distr.: Limited
9 November 2000

Original: English

Fifty-fifth session
Sixth Committee
Agenda item 155
Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts

Argentina, Australia, Belgium, Bulgaria, Cameroon, Canada, Cyprus, Czech Republic, Denmark, Germany, Greece, Hungary, Iceland, Italy, New Zealand, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Swaziland, Sweden, the Former Yugoslav Republic of Macedonia and Ukraine: draft resolution

Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts

The General Assembly,

Recalling its resolutions 32/44 of 8 December 1977, 34/51 of 23 November 1979, 37/116 of 16 December 1982, 39/77 of 13 December 1984, 41/72 of 3 December 1986, 43/161 of 9 December 1988, 45/38 of 28 November 1990, 47/30 of 25 November 1992, 49/48 of 9 December 1994, 51/155 of 16 December 1996 and 53/96 of 8 December 1998,

Having considered the report of the Secretary-General[1] on the status of the Protocols[2] Additional to the Geneva Conventions of 1949[3] and relating to the protection of victims of armed conflicts,

Thanking Member States and the International Committee of the Red Cross for their contribution to this report,

Convinced of the continuing value of established humanitarian rules relating to armed conflicts and the need to respect and ensure respect for these rules in all circumstances within the scope of the relevant international instruments, pending the earliest possible termination of such conflicts,

Stressing the possibility of making use of the International Fact-Finding Commission in relation to an armed conflict, pursuant to article 90 of Protocol I, and recalling that the International Fact-Finding Commission may, where necessary,

[1] A/55/173, Corr.1 and 2 and Add.1.
[2] United Nations, *Treaty Series*, vol. 1125, Nos. 17512 and 17513.
[3] Ibid., vol. 75, Nos. 970-973.

00-73780 (E) 091100

facilitate, through its good offices, the restoration of an attitude of respect for the Conventions and the Protocol,

Stressing also the need for consolidating the existing body of international humanitarian law through its universal acceptance and the need for wide dissemination and full implementation of such law at the national level and expressing concern about all violations of the Geneva Conventions of 1949 and the two Additional Protocols,

Noting with satisfaction the increasing number of national commissions and other bodies involved in advising authorities at the national level on the implementation, dissemination and development of international humanitarian law,

Mindful of the role of the International Committee of the Red Cross in offering protection to the victims of armed conflicts,

Noting with appreciation the continuing efforts of the International Committee of the Red Cross to promote and disseminate knowledge of international humanitarian law, in particular the Geneva Conventions of 1949 and the two Additional Protocols,

Recalling that the twenty-sixth International Conference of the Red Cross and Red Crescent endorsed the recommendations of the Intergovernmental Group of Experts on the Protection of War Victims, including the recommendation that the depositary of the Geneva Conventions of 1949 should organize periodic meetings of States parties to the Conventions to consider general problems regarding the application of international humanitarian law,

Welcoming the adoption of a second protocol[4] to the 1954 Hague Convention[5] for the Protection of Cultural Property in the Event of Armed Conflict, in The Hague on 26 March 1999,

Noting the celebration in 1999 at The Hague and at St. Petersburg of the centennial of the first International Peace Conference which highlighted the importance of the Geneva Conventions for the protection of victims of armed conflicts and their additional protocols,

Acknowledging the fact that the Rome Statute of the International Criminal Court, adopted on 17 July 1998,[6] includes the most serious crimes of international concern under international humanitarian law, and that the Statute, while recalling that it is the duty of every State to exercise its criminal jurisdiction over those responsible for such crimes, shows the determination of the international community to put an end to impunity for the perpetrators of such crimes and thus to contribute to their prevention,

Noting that international humanitarian law has been an important topic in the United Nations Decade for International Law, which came to an end in 1999, 50 years after the adoption of the Geneva Conventions, and acknowledging the usefulness of discussing in the General Assembly the status of international humanitarian law instruments relevant to the protection of victims of armed conflicts,

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[4] UNESCO document HC/1999/7.

[5] United Nations, *Treaty Series*, vol. 249, No. 3511.

[6] A/CONF.183/9.

1. *Appreciates* the virtually universal acceptance of the Geneva Conventions of 1949,[1] and notes the trend towards a similarly wide acceptance of the two additional Protocols of 1977;[2]

2. *Appeals* to all States parties to the Geneva Conventions of 1949 that have not yet done so to consider becoming parties to the additional Protocols at the earliest possible date;

3. *Calls upon* all States that are already parties to Protocol I, or those States not parties, on becoming parties to Protocol I, to make the declaration provided for under article 90 of that Protocol;

4. *Calls upon* all States which have not already done so to consider becoming parties to the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two Protocols and to other relevant treaties on international humanitarian law relating to the protection of victims of armed conflict;

5. *Calls upon* all States parties to the additional Protocols to ensure their wide dissemination and full implementation;

6. *Notes with appreciation* the Plan of Action adopted by the twenty-seventh International Conference of the Red Cross and Red Crescent, in particular the reiteration of the importance of universal adherence to treaties on humanitarian law and their effective implementation at the national level;

7. *Affirms* the necessity of making the implementation of international humanitarian law more effective;

8. *Welcomes* the advisory service activities of the International Committee of the Red Cross in supporting efforts undertaken by Member States to take legislative and administrative action to implement international humanitarian law and in promoting the exchange of information on those efforts between Governments;

9. *Welcomes* the increasing numbers of national commissions or committees for the implementation of international humanitarian law and for promoting the incorporation of such treaties into national law and disseminating the rules of international humanitarian law;

10. *Welcomes* the adoption of the Optional Protocol[7] to the Convention on the Rights of the Child on the involvement of children in armed conflicts;

11. *Requests* the Secretary-General to submit to the General Assembly at its fifty-seventh session a report on the status of the additional Protocols relating to the protection of victims of armed conflicts, as well as on measures taken to strengthen the existing body of international humanitarian law, inter alia, with respect to its dissemination and full implementation at the national level, based on information received from Member States and the International Committee of the Red Cross;

12. *Decides* to include in the provisional agenda of its fifty-seventh session the item entitled "Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts".

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[7] General Assembly resolution 54/263, annex I.

United Nations A/C.6/55/L.16

General Assembly

Distr.: Limited
10 November 2000

Original: English

Fifty-fifth session
Sixth Committee
Agenda item 160
Nationality of natural persons in relation to the succession of States

Draft resolution

Nationality of natural persons in relation to the succession of States

The General Assembly,

Having considered chapter IV of the report of the International Law Commission on the work of its fifty-first session,[1] which contains final draft articles on nationality of natural persons in relation to the succession of States,

Noting that the International Law Commission decided to recommend the draft articles to the General Assembly for their adoption in the form of a declaration,

Recalling its resolution 54/112 of 9 December 1999, by which it decided to consider at its fifty-fifth session the draft articles on nationality of natural persons in relation to the succession of States with a view to their adoption as a declaration,

Considering that the work of the International Law Commission on nationality of natural persons in relation to the succession of States would provide a useful guide for practice in dealing with this issue,

Acknowledging that the work of the International Law Commission on this topic could contribute to the elaboration of a convention or other appropriate instrument in the future, and reiterating its invitation, contained in its resolution 54/112, for Governments to submit comments and observations on the question of a convention on nationality of natural persons in relation to the succession of States,

1. *Expresses its appreciation* to the International Law Commission for its valuable work on nationality of natural persons in relation to the succession of States;

[1] *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 10* and corrigenda (A/54/10 and Corr.1 and 2).

00-74118 (E) 101100

2. *Takes note* of the articles on Nationality of Natural Persons in Relation to the Succession of States, presented by the International Law Commission in the form of a declaration, the text of which is annexed to the present resolution;

3. *Invites* Governments to take into account, as appropriate, the provisions contained therein in dealing with issues of nationality of natural persons in relation to the succession of States;

4. *Recommends* that all efforts be made for the wide dissemination of the text of these articles;

5. *Decides* to include in the provisional agenda of its fifty-ninth session an item entitled "Nationality of natural persons in relation to the succession of States".

Annex

Nationality of natural persons in relation to the succession of States

Preamble

Considering that problems of nationality arising from succession of States concern the international community,

Emphasizing that nationality is essentially governed by internal law within the limits set by international law,

Recognizing that in matters concerning nationality, due account should be taken both of the legitimate interests of States and those of individuals,

Recalling that the Universal Declaration of Human Rights of 1948[2] proclaimed the right of every person to a nationality,

Recalling also that the International Covenant on Civil and Political Rights of 1966[3] and the Convention on the Rights of the Child of 1989[4] recognize the right of every child to acquire a nationality,

Emphasizing that the human rights and fundamental freedoms of persons whose nationality may be affected by a succession of States must be fully respected,

Bearing in mind the provisions of the Convention on the Reduction of Statelessness of 1961,[5] the Vienna Convention on Succession of States in Respect of Treaties of 1978[6] and the Vienna Convention on Succession of States in Respect of State Property, Archives and Debts of 1983,[7]

Convinced of the need for the codification and progressive development of the rules of international law concerning nationality in relation to the succession of

[2] Resolution 217 A (III).
[3] Resolution 2200 A (XXI), annex.
[4] Resolution 44/25, annex.
[5] United Nations, *Treaty Series*, vol. 989, No. 14458.
[6] See A/CONF.80/31.
[7] See A/CONF.117/14.

States as a means for ensuring greater juridical security for States and for individuals,

Part I. General provisions

Article 1
Right to a nationality

Every individual who, on the date of the succession of States, had the nationality of the predecessor State, irrespective of the mode of acquisition of that nationality, has the right to the nationality of at least one of the States concerned, in accordance with the present articles.

Article 2
Use of terms

For the purposes of the present articles:

(a) "succession of States" means the replacement of one State by another in the responsibility for the international relations of territory;

(b) "predecessor State" means the State which has been replaced by another State on the occurrence of a succession of States;

(c) "successor State" means the State which has replaced another State on the occurrence of a succession of States;

(d) "State concerned" means the predecessor State or the successor State, as the case may be;

(e) "third State" means any State other than the predecessor State or the successor State;

(f) "person concerned" means every individual who, on the date of the succession of States, had the nationality of the predecessor State and whose nationality may be affected by such succession;

(g) "date of the succession of States" means the date upon which the successor State replaced the predecessor State in the responsibility for the international relations of the territory to which the succession of States relates.

Article 3
Cases of succession of States covered by the present articles

The present articles apply only to the effects of a succession of States occurring in conformity with international law and, in particular, with the principles of international law embodied in the Charter of the United Nations.

Article 4
Prevention of statelessness

States concerned shall take all appropriate measures to prevent persons who, on the date of the succession of States, had the nationality of the predecessor State from becoming stateless as a result of such succession.

Article 5
Presumption of nationality

Subject to the provisions of the present articles, persons concerned having their habitual residence in the territory affected by the succession of States are presumed to acquire the nationality of the successor State on the date of such succession.

Article 6
Legislation on nationality and other connected issues

Each State concerned should, without undue delay, enact legislation on nationality and other connected issues arising in relation to the succession of States consistent with the provisions of the present articles. It should take all appropriate measures to ensure that persons concerned will be apprised, within a reasonable time period, of the effect of its legislation on their nationality, of any choices they may have thereunder, as well as of the consequences that the exercise of such choices will have on their status.

Article 7
Effective date

The attribution of nationality in relation to the succession of States, as well as the acquisition of nationality following the exercise of an option, shall take effect on the date of such succession, if persons concerned would otherwise be stateless during the period between the date of the succession of States and such attribution or acquisition of nationality.

Article 8
Persons concerned having their habitual residence in another State

1. A successor State does not have the obligation to attribute its nationality to persons concerned if they have their habitual residence in another State and also have the nationality of that or any other State.

2. A successor State shall not attribute its nationality to persons concerned who have their habitual residence in another State against the will of the persons concerned unless they would otherwise become stateless.

Article 9
Renunciation of the nationality of another State as a condition for attribution of nationality

When a person concerned who is qualified to acquire the nationality of a successor State has the nationality of another State concerned, the former State may make the attribution of its nationality dependent on the renunciation by such person of the nationality of the latter State. However, such requirement shall not be applied in a manner which would result in rendering the person concerned stateless, even if only temporarily.

Article 10
Loss of nationality upon the voluntary acquisition of the nationality of another State

1. A predecessor State may provide that persons concerned who, in relation to the succession of States, voluntarily acquire the nationality of a successor State shall lose its nationality.

2. A successor State may provide that persons concerned who, in relation to the succession of States, voluntarily acquire the nationality of another successor State or, as the case may be, retain the nationality of the predecessor State shall lose its nationality acquired in relation to such succession.

Article 11
Respect for the will of persons concerned

1. States concerned shall give consideration to the will of persons concerned whenever those persons are qualified to acquire the nationality of two or more States concerned.

2. Each State concerned shall grant a right to opt for its nationality to persons concerned who have appropriate connection with that State if those persons would otherwise become stateless as a result of the succession of States.

3. When persons entitled to the right of option have exercised such right, the State whose nationality they have opted for shall attribute its nationality to such persons.

4. When persons entitled to the right of option have exercised such right, the State whose nationality they have renounced shall withdraw its nationality from such persons, unless they would thereby become stateless.

5. States concerned should provide a reasonable time limit for the exercise of the right of option.

Article 12
Unity of a family

Where the acquisition or loss of nationality in relation to the succession of States would impair the unity of a family, States concerned shall take all appropriate measures to allow that family to remain together or to be reunited.

Article 13
Child born after the succession of States

A child of a person concerned, born after the date of the succession of States, who has not acquired any nationality, has the right to the nationality of the State concerned on whose territory that child was born.

Article 14
Status of habitual residents

1. The status of persons concerned as habitual residents shall not be affected by the succession of States.

2. A State concerned shall take all necessary measures to allow persons concerned who, because of events connected with the succession of States, were forced to leave their habitual residence on its territory to return thereto.

Article 15
Non-discrimination

States concerned shall not deny persons concerned the right to retain or acquire a nationality or the right of option upon the succession of States by discriminating on any ground.

Article 16
Prohibition of arbitrary decisions concerning nationality issues

Persons concerned shall not be arbitrarily deprived of the nationality of the predecessor State, or arbitrarily denied the right to acquire the nationality of the successor State or any right of option, to which they are entitled in relation to the succession of States.

Article 17
Procedures relating to nationality issues

Applications relating to the acquisition, retention or renunciation of nationality or to the exercise of the right of option, in relation to the succession of States, shall be processed without undue delay. Relevant decisions shall be issued in writing and shall be open to effective administrative or judicial review.

Article 18
Exchange of information, consultation and negotiation

1. States concerned shall exchange information and consult in order to identify any detrimental effects on persons concerned with respect to their nationality and other connected issues regarding their status as a result of the succession of States.

2. States concerned shall, when necessary, seek a solution to eliminate or mitigate such detrimental effects by negotiation and, as appropriate, through agreement.

Article 19
Other States

1. Nothing in the present articles requires States to treat persons concerned having no effective link with a State concerned as nationals of that State, unless this would result in treating those persons as if they were stateless.

2. Nothing in the present articles precludes States from treating persons concerned, who have become stateless as a result of the succession of States, as nationals of the State concerned whose nationality they would be entitled to acquire or retain, if such treatment is beneficial to those persons.

Part II. Provisions relating to specific categories of succession of States

Section 1
Transfer of part of the territory

Article 20
Attribution of the nationality of the successor State and withdrawal of the nationality of the predecessor State

When part of the territory of a State is transferred by that State to another State, the successor State shall attribute its nationality to the persons concerned who have their habitual residence in the transferred territory and the predecessor State shall withdraw its nationality from such persons, unless otherwise indicated by the exercise of the right of option which such persons shall be granted. The predecessor State shall not, however, withdraw its nationality before such persons acquire the nationality of the successor State.

Section 2
Unification of States

Article 21
Attribution of the nationality of the successor State

Subject to the provisions of article 8, when two or more States unite and so form one successor State, irrespective of whether the successor State is a new State or whether its personality is identical to that of one of the States which have united, the successor State shall attribute its nationality to all persons who, on the date of the succession of States, had the nationality of a predecessor State.

Section 3
Dissolution of a State

Article 22
Attribution of the nationality of the successor States

When a State dissolves and ceases to exist and the various parts of the territory of the predecessor State form two or more successor States, each successor State shall, unless otherwise indicated by the exercise of a right of option, attribute its nationality to:

(a) persons concerned having their habitual residence in its territory; and

(b) subject to the provisions of article 8:

(i) persons concerned not covered by subparagraph (a) having an appropriate legal connection with a constituent unit of the predecessor State that has become part of that successor State;

(ii) persons concerned not entitled to a nationality of any State concerned under subparagraphs (a) and (b) (i) having their habitual residence in a third State, who were born in or, before leaving the predecessor State, had their last habitual residence in what has become the territory of that

successor State or having any other appropriate connection with that successor State.

Article 23
Granting of the right of option by the successor States

1. Successor States shall grant a right of option to persons concerned covered by the provisions of article 22 who are qualified to acquire the nationality of two or more successor States.

2. Each successor State shall grant a right to opt for its nationality to persons concerned who are not covered by the provisions of article 22.

Section 4
Separation of part or parts of the Territory

Article 24
Attribution of the nationality of the successor State

When part or parts of the territory of a State separate from that State and form one or more successor States while the predecessor State continues to exist, a successor State shall, unless otherwise indicated by the exercise of a right of option, attribute its nationality to:

(a) persons concerned having their habitual residence in its territory; and

(b) subject to the provisions of article 8:

(i) persons concerned not covered by subparagraph (a) having an appropriate legal connection with a constituent unit of the predecessor State that has become part of that successor State;

(ii) persons concerned not entitled to a nationality of any State concerned under subparagraphs (a) and (b) (i) having their habitual residence in a third State, who were born in or, before leaving the predecessor State, had their last habitual residence in what has become the territory of that successor State or having any other appropriate connection with that successor State.

Article 25
Withdrawal of the nationality of the predecessor State

1. The predecessor State shall withdraw its nationality from persons concerned qualified to acquire the nationality of the successor State in accordance with article 24. It shall not, however, withdraw its nationality before such persons acquire the nationality of the successor State.

2. Unless otherwise indicated by the exercise of a right of option, the predecessor State shall not, however, withdraw its nationality from persons referred to in paragraph 1 who:

(a) have their habitual residence in its territory;

(b) are not covered by subparagraph (a) and have an appropriate legal connection with a constituent unit of the predecessor State that has remained part of the predecessor State;

(c) have their habitual residence in a third State, and were born in or, before leaving the predecessor State, had their last habitual residence in what has remained part of the territory of the predecessor State or have any other appropriate connection with that State.

Article 26
Granting of the right of option by the predecessor and the successor States

Predecessor and successor States shall grant a right of option to all persons concerned covered by the provisions of articles 24 and 25, paragraph 2, who are qualified to have the nationality of both the predecessor and successor States or of two or more successor States.

United Nations A/C.6/55/L.17

General Assembly

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16 November 2000

Original: English

Fifty-fifth session
Sixth Committee
Agenda item 164
Measures to eliminate international terrorism

Draft resolution submitted by the coordinator

Measures to eliminate international terrorism

The General Assembly,

Guided by the purposes and principles of the Charter of the United Nations,

Recalling all relevant General Assembly and Security Council resolutions on measures to eliminate international terrorism,

Convinced of the importance of the consideration of measures to eliminate international terrorism by the General Assembly as the universal organ having competence to do so,

Recalling the Declaration on the Occasion of the Fiftieth Anniversary of the United Nations,[1]

Recalling also the United Nations Millennium Declaration,[2]

Deeply disturbed by the persistence of terrorist acts, which have been carried out worldwide,

Stressing the need to strengthen further international cooperation between States and between international organizations and agencies, regional organizations and arrangements and the United Nations in order to prevent, combat and eliminate terrorism in all its forms and manifestations, wherever and by whomsoever committed,

Mindful of the need to enhance the role of the United Nations and the relevant specialized agencies in combating international terrorism, and of the proposals of the Secretary-General to enhance the role of the Organization in this respect,

Recalling the Declaration on Measures to Eliminate International Terrorism, contained in the annex to resolution 49/60 of 9 December 1994, wherein the General

[1] See resolution 50/6.
[2] See resolution 55/2.

00-75151 (E) 161100

Assembly encouraged States to review urgently the scope of the existing international legal provisions on the prevention, repression and elimination of terrorism in all its forms and manifestations, with the aim of ensuring that there was a comprehensive legal framework covering all aspects of the matter,

Taking note of the final document of the Thirteenth Ministerial Conference of the Movement of Non-Aligned Countries, held in Cartagena, Colombia on 8 and 9 April 2000,[3] which reiterated the collective position of the Movement of Non-Aligned Countries on terrorism and reaffirmed the previous initiative of the Twelfth Conference of Heads of State or Government of Non-Aligned Countries, held at Durban, South Africa, from 29 August to 3 September 1998, calling for an international summit conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations,[4]

Recalling its decision in resolution 54/110 of 9 December 1999 that the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 should address the question of convening a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations,

Noting regional efforts to prevent, combat and eliminate terrorism in all its forms and manifestations, wherever and by whomsoever committed, including through the elaboration of and adherence to regional conventions,

Having examined the report of the Secretary-General,[5] the report of the Ad Hoc Committee[6] and the report of the Working Group of the Sixth Committee established pursuant to resolution 54/110,[7]

1. *Strongly condemns* all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomsoever committed;

2. *Reiterates* that criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstances unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature that may be invoked to justify them;

3. *Reiterates its call* upon all States to adopt further measures in accordance with the relevant provisions of international law, including international standards of human rights, to prevent terrorism and to strengthen international cooperation in combating terrorism and, to that end, to consider in particular the implementation of the measures set out in paragraphs 3 (*a*) to (*f*) of resolution 51/210 of 17 December 1996;

4. *Also reiterates its call* upon all States, with the aim of enhancing the efficient implementation of relevant legal instruments, to intensify, as and where appropriate, the exchange of information on facts related to terrorism and, in so doing, to avoid the dissemination of inaccurate or unverified information;

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[3] A/54/917-S/2000/580, annex.

[4] See A/53/667-S/1998/1071, annex I, paras. 149-162.

[5] A/55/179 and Add.1.

[6] *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 37* (A/55/37).

[7] A/C.6/55/L.2.

5. *Reiterates its call* upon States to refrain from financing, encouraging, providing training for or otherwise supporting terrorist activities;

6. *Reaffirms* that international cooperation as well as actions by States to combat terrorism should be conducted in conformity with the principles of the Charter of the United Nations, international law and relevant international conventions;

7. *Urges* all States that have not yet done so to consider, as a matter of priority, becoming parties to relevant conventions and protocols as referred to in paragraph 6 of resolution 51/210, as well as the International Convention for the Suppression of Terrorist Bombings,[8] and the International Convention for the Suppression of the Financing of Terrorism,[9] and calls upon all States to enact, as appropriate, domestic legislation necessary to implement the provisions of those conventions and protocols, to ensure that the jurisdiction of their courts enables them to bring to trial the perpetrators of terrorist acts, and to cooperate with and provide support and assistance to other States and relevant international and regional organizations to that end;

8. *Notes with appreciation and satisfaction* that a number of States have, during the fifty-fourth session of the General Assembly and the Millennium Assembly, become parties to the relevant conventions and protocols referred to in paragraph 7 above, thereby realizing the objective of wider acceptance and implementation of these conventions;

9. *Reaffirms* the Declaration on Measures to Eliminate International Terrorism contained in the annex to resolution 49/60 and the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism contained in the annex to resolution 51/210, and calls upon all States to implement them;

10. *Welcomes* the efforts of the Terrorism Prevention Branch of the Centre for International Crime Prevention in Vienna, after reviewing existing possibilities within the United Nations system, to enhance, through its mandate, the capabilities of the United Nations in the prevention of terrorism;

11. *Invites* States that have not yet done so to submit to the Secretary-General information on their national laws and regulations regarding the prevention and suppression of acts of international terrorism;

12. *Invites* regional intergovernmental organizations to submit to the Secretary-General information on the measures they have adopted at the regional level to eliminate international terrorism;

[8] Resolution 52/164, annex.
[9] Resolution 54/109, annex.

13. *Decides* that the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 shall continue to elaborate a comprehensive convention on international terrorism and shall continue its efforts to resolve the outstanding issues relating to the elaboration of a draft international convention for the suppression of acts of nuclear terrorism, as a means of further developing a comprehensive legal framework of conventions dealing with international terrorism, and that it shall keep on its agenda the question of convening a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations;

14. *Decides* that the Ad Hoc Committee shall meet from 12 to 23 February 2001 to continue the elaboration of a draft comprehensive convention on international terrorism, with appropriate time allocated to the continued consideration of outstanding issues relating to the elaboration of a draft international convention for the suppression of acts of nuclear terrorism,[10] that it will keep on its agenda the question of convening a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations, and that the work shall continue during the fifty-sixth session of the General Assembly between 15 and 26 October 2001, within the framework of a working group of the Sixth Committee;

15. *Requests* the Secretary-General to continue to provide the Ad Hoc Committee with the necessary facilities for the performance of its work;

16. Requests the Ad Hoc Committee to report to the General Assembly at its fifty-fifth session in the event of the completion of the draft international convention for the suppression of acts of nuclear terrorism;

17. *Also requests* the Ad Hoc Committee to report to the General Assembly at its fifty-sixth session on progress made in the implementation of its mandate;

18. *Decides* to include in the provisional agenda of its fifty-sixth session the item entitled "Measures to eliminate international terrorism".

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[10] See A/C.6/55/L.2.

United Nations A/C.6/55/L.18

General Assembly

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Fifty-fifth session
Sixth Committee
Agenda item 165
Review of the Statute of the United Nations Administrative Tribunal

France, Ireland and United Kingdom of Great Britain and Northern Ireland: draft resolution

Review of the Statute of the United Nations Administrative Tribunal

The General Assembly,

Acknowledging with gratitude the important contribution which the United Nations Administrative Tribunal ("the Tribunal") has made to the functioning of the United Nations system and commending the members of the Tribunal on their valuable work,

Desiring to assist the Tribunal in carrying out its future work as effectively as possible,

Noting the report of the Joint Inspection Unit on the administration of justice at the United Nations,[1]

Noting also the need to consider the appropriateness of the establishment of an appeals mechanism in relation to the decisions of the Tribunal,

Recognizing that, in appointing members of the Tribunal, the General Assembly should take into account the need to ensure adequate representation on the Tribunal of the principal legal systems of the world and fair geographical representation, and bearing in mind the relevant provisions of the Charter of the United Nations,

1. *Decides* to amend the Statute of the Tribunal ("the Statute"), with effect from 1 January 2001, as follows:

[1] See A/55/57.

00-74614 (E) 141100

(a) Article 3, paragraph 1, shall be amended to read as follows:

"The Tribunal shall be composed of seven members, no two of whom may be nationals of the same State. Members shall possess the requisite qualifications and experience, including, as appropriate, legal qualifications and experience. Only three members shall sit in any particular case."

(b) Article 3, paragraph 2, shall be amended to read as follows:

"The members shall be appointed by the General Assembly for four years and may be reappointed once. A member appointed to replace a member whose term of office has not expired shall hold office for the remainder of his or her predecessor's term, and may be reappointed once."

(c) A new article 8 shall be inserted, to read as follows:

"Where the three members of the Tribunal sitting in any particular case consider that the case raises a significant question of law, they may, at any time before they render judgement, refer the case for consideration by the whole Tribunal. The quorum for a hearing by the whole Tribunal shall be five members."

(d) Former articles 8 to 13 of the Statute shall be renumbered 9 to 14, and references to those articles shall be amended accordingly;

(e) The pronouns "he" and "his", wherever they appear in the Statute, shall be amended to read "he or she" or "his or her", respectively;

(f) In article 7, paragraph 7, and in renumbered article 11, paragraph 4, references to "five official languages" shall be amended to read "six official languages";

2. *Also decides* that members serving on the Tribunal as at 1 January 2001 shall have their current term of office extended by one year, and that thereafter, provided that they have not served on the Tribunal for more than seven years, they may be reappointed once;

3. *Further decides* that the Statute, with effect from 1 January 2001, shall read as it appears in the annex to the present resolution.

Annex

Statute of the Administrative Tribunal of the United Nations

Article 1

A Tribunal is established by the present Statute to be known as the United Nations Administrative Tribunal.

Article 2

1. The Tribunal shall be competent to hear and pass judgement upon applications alleging non-observance of contracts of employment of staff members of the Secretariat of the United Nations or of the terms of appointment of such staff members. The words "contracts" and "terms of appointment" include all pertinent

regulations and rules in force at the time of alleged non-observance, including the staff pension regulations.

2. The Tribunal shall be open:

(a) To any staff member of the Secretariat of the United Nations even after his or her employment has ceased, and to any person who has succeeded to the staff member's rights on his or her death;

(b) To any other person who can show that he or she is entitled to rights under any contract or terms of appointment, including the provisions of staff regulations and rules upon which the staff member could have relied.

3. In the event of a dispute as to whether the Tribunal has competence, the matter shall be settled by the decision of the Tribunal.

4. The Tribunal shall not be competent, however, to deal with any applications where the cause of complaint arose prior to 1 January 1950.

Article 3

1. The Tribunal shall be composed of seven members, no two of whom may be nationals of the same State. Members shall possess the requisite qualifications and experience, including, as appropriate, legal qualifications and experience. Only three members shall sit in any particular case.

2. The members shall be appointed by the General Assembly for four years and may be reappointed once. A member appointed to replace a member whose term of office has not expired shall hold office for the remainder of his or her predecessor's term, and may be reappointed once.

3. The Tribunal shall elect its President and its two Vice-Presidents from among its members.

4. The Secretary-General shall provide the Tribunal with an Executive Secretary and such other staff as may be considered necessary.

5. No member of the Tribunal can be dismissed by the General Assembly unless the other members are of the unanimous opinion that he or she is unsuited for further service.

6. In case of a resignation of a member of the Tribunal, the resignation shall be addressed to the President of the Tribunal for transmission to the Secretary-General. This last notification makes the place vacant.

Article 4

The Tribunal shall hold ordinary sessions at dates to be fixed by its rules, subject to there being cases on its list which, in the opinion of the President, justify holding the session. Extraordinary sessions may be convoked by the President when required by the cases on the list.

Article 5

1. The Secretary-General of the United Nations shall make the administrative arrangements necessary for the functioning of the Tribunal.

2. The expenses of the Tribunal shall be borne by the United Nations.

Article 6

1. Subject to the provisions of the present Statute, the Tribunal shall establish its rules.

2. The rules shall include provisions concerning:

(a) Election of the President and Vice-Presidents;

(b) Composition of the Tribunal for its sessions;

(c) Presentation of applications and the procedure to be followed in respect to them;

(d) Intervention by persons to whom the Tribunal is open under paragraph 2 of article 2, whose rights may be affected by the judgement;

(e) Hearing, for purposes of information, of persons to whom the Tribunal is open under paragraph 2 of article 2, even though they are not parties to the case, and generally;

(f) Other matters relating to the functioning of the Tribunal.

Article 7

1. An application shall not be receivable unless the person concerned has previously submitted the dispute to the joint appeals body provided for in the Staff Regulations and the latter has communicated its opinion to the Secretary-General, except where the Secretary-General and the applicant have agreed to submit the application directly to the Administrative Tribunal.

2. In the event of the joint body's recommendations being favourable to the application submitted to it, and insofar as this is the case, an application to the Tribunal shall be receivable if the Secretary-General has:

(a) Rejected the recommendations;

(b) Failed to take any action within thirty days following the communication of the opinion;

(c) Failed to carry out the recommendations within thirty days following the communication of the opinion.

3. In the event that the recommendations made by the joint body and accepted by the Secretary-General are unfavourable to the applicant, and insofar as this is the case, the application shall be receivable, unless the joint body unanimously considers that it is frivolous.

4. An application shall not be receivable unless it is filed within ninety days reckoned from the respective dates and periods referred to in paragraph 2 above, or within ninety days reckoned from the date of the communication of the joint body's opinion containing recommendations unfavourable to the applicant. If the circumstance rendering the application receivable by the Tribunal, pursuant to paragraphs 2 and 3 above, is anterior to the date of announcement of the first session of the Tribunal, the time limit of ninety days shall begin to run from that date. Nevertheless, the said time limit on his or her behalf shall be extended to one year if

the heirs of a deceased staff member or the trustee of a staff member who is not in a position to manage his or her own affairs, file the application in the name of the said staff member.

5. In any particular case, the Tribunal may decide to suspend the provisions regarding time limits.

6. The filing of an application shall not have the effect of suspending the execution of the decision contested.

7. Applications may be filed in any of the six official languages of the United Nations.

Article 8

Where the three members of the Tribunal sitting in any particular case consider that the case raises a significant question of law, they may, at any time before they render judgement, refer the case for consideration by the whole Tribunal. The quorum for a hearing by the whole Tribunal shall be five members.

Article 9

The oral proceedings of the Tribunal shall be held in public unless the Tribunal decides that exceptional circumstances require that they be held in private.

Article 10

1. If the Tribunal finds that the application is well founded, it shall order the rescinding of the decision contested or the specific performance of the obligation invoked. At the same time, the Tribunal shall fix the amount of compensation to be paid to the applicant for the injury sustained should the Secretary-General, within thirty days of the notification of the judgement, decide, in the interest of the United Nations, that the applicant shall be compensated without further action being taken in his or her case, provided that such compensation shall not exceed the equivalent of two years' net base salary of the applicant. The Tribunal may, however, in exceptional cases, when it considers it justified, order the payment of a higher indemnity. A statement of the reasons for the Tribunal's decision shall accompany each such order.

2. Should the Tribunal find that the procedure prescribed in the Staff Regulations or Staff Rules has not been observed, it may, at the request of the Secretary-General and prior to the determination of the merits of the case, order the case remanded for institution or correction of the required procedure. Where a case is remanded, the Tribunal may order the payment of compensation, which is not to exceed the equivalent of three months' net base salary, to the applicant for such loss as may have been caused by the procedural delay.

3. In all applicable cases, compensation shall be fixed by the Tribunal and paid by the United Nations or, as appropriate, by the specialized agency participating under article 14.

Article 11

1. The Tribunal shall take all decisions by a majority vote.

2. Subject to the provisions of article 12, the judgements of the Tribunal shall be final and without appeal.

3. The judgements shall state the reasons on which they are based.

4. The judgements shall be drawn up, in any of the six official languages of the United Nations, in two originals, which shall be deposited in the archives of the Secretariat of the United Nations.

5. A copy of the judgement shall be communicated to each of the parties in the case. Copies shall also be made available on request to interested persons.

Article 12

The Secretary-General or the applicant may apply to the Tribunal for a revision of a judgement on the basis of the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgement was given, unknown to the Tribunal and also to the party claiming revision, always provided that such ignorance was not due to negligence. The application must be made within thirty days of the discovery of the fact and within one year of the date of the judgement. Clerical or arithmetical mistakes in judgements, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Tribunal either of its own motion or on the application of any of the parties.

Article 13

The present Statute may be amended by decision of the General Assembly.

Article 14

1. The competence of the Tribunal shall be extended to the staff of the Registry of the International Court of Justice upon the exchange of letters between the President of the Court and the Secretary-General of the United Nations establishing the relevant conditions.

2. The Tribunal shall be competent to hear and pass judgement upon applications alleging non-observance of the regulations of the United Nations Joint Staff Pension Fund arising out of the decision of the United Nations Joint Staff Pension Board submitted to the Tribunal by:

(a) Any staff member of a member organization of the Pension Fund which has accepted the jurisdiction of the Tribunal in Pension Fund cases who is eligible under article 21 of the regulations of the Fund as a participant in the Fund, even if his or her employment has ceased, and any person who has acceded to such staff member's rights upon his or her death;

(b) Any other person who can show that he or she is entitled to rights under the regulations of the Pension Fund by virtue of the participation in the Fund of a staff member of such member organization.

3. The competence of the Tribunal may be extended to any specialized agency brought into relationship with the United Nations in accordance with the provisions of Articles 57 and 63 of the Charter upon the terms established by a special agreement to be made with each such agency by the Secretary-General of the United Nations. Each such special agreement shall provide that the agency

concerned shall be bound by the judgements of the Tribunal and be responsible for the payment of any compensation awarded by the Tribunal in respect of a staff member of that agency and shall include, inter alia, provisions concerning the agency's participation in the administrative arrangements for the functioning of the Tribunal and concerning its sharing the expenses of the Tribunal.

4. The competence of the Tribunal may also be extended, with the approval of the General Assembly, to any other international organization or entity, established by a treaty and participating in the common system of conditions of service, upon the terms set out in a special agreement between the organization or entity concerned and the Secretary-General of the United Nations. Each such special agreement shall provide that the organization or entity concerned shall be bound by the judgements of the Tribunal and be responsible for the payment of any compensation awarded by the Tribunal in respect of a staff member of that organization or entity and shall include, inter alia, provisions concerning its participation in the administrative arrangements for the functioning of the Tribunal and concerning its sharing the expenses of the Tribunal.

United Nations A/C.6/55/L.19

General Assembly

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Fifty-fifth session
Sixth Committee
Agenda item 157
Convention on jurisdictional immunities of States and their property

Austria, Belgium, Costa Rica, Côte d'Ivoire, Cyprus, Denmark, France, Germany, Greece, Lesotho, Nigeria, Poland and Sierra Leone: draft resolution

Convention on jurisdictional immunities of States and their property

The General Assembly,

Recalling its resolution 54/101 of 9 December 1999,

Having considered the report of the Working Group on Jurisdictional Immunities of States and Their Property of the International Law Commission, set forth in the annex to the report of the Commission on the work of its fifty-first session,[1]

Having considered also the reports presented to the Sixth Committee by the Chairman of the open-ended working group of the Committee established under resolutions 53/98 of 9 December 1999[2] and 54/101,[3]

Having considered further the report of the Secretary-General,[4]

1. *Takes note with appreciation* of the report of the Working Group on Jurisdictional Immunities of States and Their Property of the International Law Commission, set forth in the annex to the report of the Commission on the work of its fifty-first session;[1]

2. *Urges* States, if they have not yet done so, to submit their comments to the Secretary-General in accordance with General Assembly resolution 49/61 of 9

[1] *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 10* and corrigenda (A/54/10 and Corr.1 and 2).
[2] See A/C.6/54/L.12; see also *Official Records of the General Assembly, Fifty-fourth Session, Sixth Committee*, 30th meeting (A/C.6/54/SR.30) and corrigendum.
[3] See A/C.6/55/L.12; see also *Official Records of the General Assembly, Fifty-fifth Session, Sixth Committee*, ___ meeting (A/C.6/55/SR.__).
[4] A/55/298.

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December 1994, and also invites States to submit in writing to the Secretary-General, by 1 August 2001, their comments on the reports of the Working Group,[2 3]

3. *Decides* to establish an ad hoc Committee on Jurisdictional Immunities of States and Their Property, open also to participation by States members of the specialized agencies, to further consolidate areas of agreement and resolve outstanding issues with a view to elaborating a generally acceptable instrument based on the draft articles on jurisdictional immunities of States and their property adopted by the International Law Commission at its forty-third session,[5] and also on the discussions of the open-ended working group of the Committee established under resolutions 53/98 and 54/101 and their results;[6]

4. *Decides* that the ad hoc Committee will meet for two weeks in March 2002;

5. *Also decides* to include in the provisional agenda of its fifty-sixth session the item entitled "Convention on jurisdictional immunities of States and their property".

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[5] *Yearbook of the International Law Commission, 1991*, vol. II, Part Two (United Nations publication, Sales No. E.93.V.9 (Part 2)), document A/46/10, chap. II, para. 28.

[6] See A/C.6/54/L.12 and A/C.6/55/L.12.

United Nations A/C.6/55/L.20

General Assembly

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Fifty-fifth session
Sixth Committee
Agenda item 184
Observer status for the Economic Community of Central African States in the General Assembly

Angola, Burundi, Cameroon, Central African Republic, Equatorial Guinea, Gabon, Ireland: draft resolution

Observer status for the Economic Community of Central African States in the General Assembly

The General Assembly,

Wishing to promote cooperation between the United Nations and the Economic Community of Central African States,

1. *Decides* to invite the Economic Community of Central African States to participate in the sessions and the work of the General Assembly in the capacity of observer;

2. *Requests* the Secretary-General to take the necessary action to implement the present resolution.

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United Nations A/C.6/55/L.21

General Assembly

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Fifty-fifth session
Sixth Committee
Agenda item 159
Report of the International Law Commission on the work of its fifty-second session

Report of the International Law Commission on the work of its fifty-second session

Programme budget implications of draft resolution A/C.6/55/L.6

Statement submitted by the Secretary-General in accordance with rule 153 of the rules of procedure of the General Assembly

A. Requests contained in the draft resolution

1. By operative paragraphs 12 and 13 of draft resolution A/C.6/55/L.6, the General Assembly would:

(a) Decide that the next session of the Commission will be held in the United Nations Office at Geneva from 23 April to 1 June and from 12 July to 10 August 2001.

(b) Reiterate the request contained in paragraph 11 of its resolution 54/111 of 9 December 1999, and emphasize the need to implement cost-saving measures, such as those described in paragraph 639 of the report of the Commission on the work of its fifty-first session.[1]

B. Background

2. A provision had been made in section 8, Legal affairs, of the proposed programme budget for the biennium 2000-2001 for the convening of two 12-week sessions at Geneva, one session in 2000 and one in 2001.

[1] *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 10* and corrigenda (A/54/10 and Corr.1 and 2).

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3. It is recalled that in the programme budget implications statement (A/C.6/54/L.21) submitted to the Sixth Committee in 1999, at the time of its adoption of draft resolution A/C.6/54/L.7/Rev.1, it was pointed out that a split session would result in additional costs for travel of the Chairman and members of the Commission, as well as for the travel for members of the Secretariat. The General Assembly, in its resolution 54/250 of 23 December 1999 approving the programme budget for the biennium 2000-2001, authorized an additional amount of $105,200 for the holding of a split session in 2000.

C. Relationship of the proposed requests to the medium-term plan for the period 1998-2001 and to the proposed programme of work for the biennium 2000-2001

4. The above-mentioned request of the Assembly relates to activities in subprogramme 3, Progressive development and codification of international law, of programme 4, Legal affairs, and to programme 27, General Assembly and Economic and Social Council affairs and conference services, of the medium-term plan for the period 1998-2001 and to section 8, Legal affairs, and section 2, General Assembly affairs and conference services, of the programme budget for the biennium 2000-2001. No modifications to those programmes would be necessary as a result of the activities requested in the draft resolution.

D. Additional requirements for the biennium 2000-2001

5. Should the General Assembly adopt draft resolution A/C.6/55/L.6, the Commission will hold a 12-week split session at Geneva from 23 April to 1 June and from 12 July to 10 August 2001. The holding of a split session would result in additional costs for travel of the Chairman and members of the Commission ($99,000) and travel for members of the Secretariat ($14,000).

E. Potential for absorption

6. Substantive servicing of two 12-week sessions, including one split session in 2000 of the International Law Commission, has been included in the programme budget for the biennium 2000-2001. There is no provision, however, for the additional requirements related to the convening of another split session in 2001.

7. With regard to conference-servicing requirements, the programme budget for the biennium 2000-2001 includes provision not only for meetings already in the calendar of conferences but also for meetings to be added at a subsequent stage by decision of the General Assembly, provided that the number and distribution of meetings is consistent with the pattern in previous years. On this basis, it is anticipated that no additional resources would be required for the provision of conference services for the Commission.

8. The session held in 2000 resulted in savings due to the facts that: two members residing in Geneva did not incur any travel or daily subsistence allowance costs (DSA); the rate of DSA applicable was lower than budgeted; and attendance was less than projected. Given that the overall savings achieved in 2000 would fully

offset the additional costs for travel of members and of the Secretariat attending a split session in 2001, there would be no additional requirements arising as a result of the adoption of draft resolution A/C.6/55/L.6.

F. Summary

9. **Accordingly, should the General Assembly adopt draft resolution A/C.6/55/L.6, no additional resources would be required under section 8, Legal affairs, of the programme budget for the biennium 2000-2001.**